

THE
SUPERIORITY
AND
DIRECT DOMINION
OF THE
Imperial CROWN
OF
ENGLAND,
OVER THE
CROWN and KINGDOM
OF
SCOTLAND,

AND THE
Divine Right of Succession to both CROWNS
Inseparable from the Civil,

ASSERTED.

In Answer to Sir Thomas Craig's Treatise of Baronage
and Succession; Occasionaly detecting several material
Errors of Sir George Mackenzie and other eminent Authors.
With some Account of the Antiquity, Extent, and Constitution
of the now British Monarchy. Explaining considerable
parts of the British, English, and Scotch Histories
and Laws.

— Lewis' Impartial
Antiquid curia regis messe.

1704.

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Four-Head Tavern in Holborn, 1704.



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To the Right Honourable
Charles Lord Mohun,
Baron of OAKHAMPTON.

THIS Island, My Lord, which has been distinguished from the whole World, for the early embracing Christianity, the Valour of its People, the felicity of the Soyl, and excellency of its Constitutions, (unless God's Providence, and the Guardian Angel, to which he has allotted this Station; interpose,) is too likely to be mingled with the rest of the World, in those Calamities, which vex the Continents. The Enemies to the publick Tranquillity, (as too many such there have been within this Island,) have had frequent prospects of Succeeding,

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ing, even to their own Ruin, in the Desolation of their Country : But, generally, the Almighty has raised up some few Great Men among us, whom he has adapted to the exigencies of the Publick.

Several such I have known, that now are Dead, and others yet Alive, whose Memories will be transmitted to Posterity, for their eminent Zeal, Services, and Abilities, in the Cause of their Country.

In the first Rank of those Patriots, were the two Charles's, Earls of *Macclesfeld*.

How well they judged and acted for the Interest of *England*, was not more visible in any thing, than in their early and strenuous Endeavours, that the *August House of Hanover*, might be comprehended within the Settlement of the Crown.

With the same Wisdom, that the first of our *Protestant Queens* decli-

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ned naming a Successor; King William of Glorious Memory, chose to strengthen the security of this Kingdom, by causing the House of Hanover to be added to the Support of the British Throne.

Tho' many shining Qualities, had indear'd the last *Charles, Earl of Macclesford*, to that best Judge of Men, his Lordship's acquitting himself so perfectly well, upon that *Embassy*, may be thought to have made our late King the more sensibly, to express Himself, that by, *that Earl's Death, he lost one of his best Friends.*

In which, the loss to the Publick, would have been irreparable, if we could not Justly apply that of the *Prince of Poets,*

Uno avulso non deficit alter

Aureus —

*One Golden Branch being off, another
Springs.*

A 3 Your

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Your Lordship, to the satisfaction of all, who Value the Memory of the Earl of Macclesfeld, was made *Hæres ex aſſe*, according to the expression in the Civil-Law, in which an *Adopted Heir*, is as fully and truly *Heir*, as one Born so.

As W. I. was made *Heir* to the *Confessor*, your Lordship was to the Earl of Macclesfeld; whose desire in the Codicil annexed to his Will, that your Lordship would take care of the Protestant Religion, and the interest of England; was not from any doubt, but an Expression of a well grounded Assurance, and a Testimony, that your Lordship's eminence in the Cause of your Country, (the Love of which, had in him, the Ascendent over every other Passion) was the real inducement, to his so free and noble Gift.

Tho' 'tis God's Pleasure, that some Men, to manifest his Power, and the

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the intrinsic value of Truth, and an admirable Constitution of Government, should be carried, as it were by a *Divine Impulse*, still to go on in that Cause, with an obstinacy, not to be cured, by all which the World thinks Calamitous; yet, for encouragement, and examples to them, who thus labour up the Hill, he leads some as it were with a *Pillar of fire*, and sets them out with all the Advantages, which give reputation to Virtue.

Such Virtue, I mean, as may well be thought above what engrosses the Name of Moral. For that Piety, which engages Men to venture all for their Country, as it comes from God, pursues *revealed*, as well as *natural Religion*.

The Marks of God's Favour upon this account, are often the more conspicuous, when, by the influence of his *Holy Spirit*, he has

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drawn a great Mind, from a vain pursuit after false Pleasures, to the delightful View of a well-established Renown, and a forecast of ineffable Glories in a future State.

To recommend such Examples, and make them the more amiable, he adds the Goods of this Life, when they may be trusted, in the Hands of a Steward, who will apply them to those uses, by which they attain the greatest Happiness on this side Eternity.

This Happiness, Christian Philosophers, and particularly the Learned Bishop Cumberland, prove to consist in doing good to Mankind. Nor did the Heathens want this Notion, when they formed the Maxim,

The more common the Good is, 'tis so much the better.

Vid. His.
Answer to
Hobbs.

The

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The Goodness of Great Men, to particular Persons, is limited to narrow Bounds, in comparison with that, which extends to *Constitutions* of Government; by which more than can fall within the largest knowldg, and opportunities, receive benefits, the Seats of which, like that of the Sun, and common Air, is lost by the diffusion, and continuance.

Private Persons of lower Stations, may amidst the sharpest Tryals, reap Satisfaction, in the inward Testimony of their Sincerity, and the assurance, that they aim at a general Good.

But the disadvantages they lye under, as they deprecate their Services; allow them, but a small share of that sublime Pleasure, which flows in upon Great Men, of your Lordship's Capacity, and Spirit.

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The Cause of publick Liberty, that is, the maintaining the best of *Constitutions*, which secures it, your *Lordship* has as an *Heir-loom*, in the same Sense that a *Noble Man's Arms* were, in the old *Brish* and *Saxon* Law. These a Man could not part with, but they were to go to the *Heir* of his Estate.

This *Heir-loom* of the *Public*, which that true Lover of his Country left your *Lordship*, is but a proper accession, to what your *Lordship* is known to derive from your *Ancestors*.

From your *Grand-father* by the *Mother's side*, the *Earl of Anglesey*, who Laid the Foundation of his unequall'd knowledg of our *Constitution*, and ability for the *State*, in the Study of the *Law*; and from your *Father*, whose Love to *legal Liberty*, and Courage in asserting it, occasion'd his much lamented Death;

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Death ; your *Lordship* derives so happy a Composition, as makes the hopes of *English Men* rise, with your *Lordship's* growing Fame.

Nor is there any Man more in their Eye, for assisting them, in maintaining the Rights of the *Imperial Crown* of this Kingdom,

Tam Marte quam Mercurio.

If the present Question should come to be matter of *publick Debate*, and for want of a right understanding go farther ; this Nation must needs be glad, to find the Abilities of that matchless *Statesman*, the *Earl of Anglesey*, in the Inheritor of your *Father's* Valour and Estate, with the addition of the *Earl of Macclesfeld's*.

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Gratitude to the Memory of King *William*, to whom the *House of Hanover* owe their immediate Interest in the *Succession*, in the same Sense that *William*, falsely called the *Conqueror*, had this *Crown* of the Gift of *Edward the Confessor*; and Justice to that of both the *Charles's*, Earls of *Maclesfeld*, whose warmth in this, as in all matters of near concern to their *Country*, made their Characters the more Exalted; might be sufficient to put me upon drawing together what has occurred to me, of that Right of the *Imperial Crown of England*, which takes from the *Scots* all occasions, or pretences, for reviving antient *Feuds*, about the Right of Succession to their *Crown*.

I know not whether 'tis allowable for one, who may be thought to discredit his *Ancestors*, to add as a prevailing Consideration, that my

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my Great Grand-father * Sir Peter ^{* Md. sic} Young, of Setoun in Scotland, was ^{Scriptum} reliquit in Ambassador to the Court of Denmark, to conclude that Treaty ^{Suâ Ephe} meri ad diem 15m. of Marriage, from whence we ^{Aug. Hic} dies natal. have the Blessing of Her present fuit Petri Majesty's Reign, and assurance, Junij de that late Posterity shall not la- Setoun e- quentis Ordinis, lament the want of a Protestant Sapientissimo Principi Jac. Descendent from that Marriage, vi. Mag- to sit upon the Throne of Great nae Brit. &c. Regi, a primâ infantia,

pueritiâ, & adolescentiâ a studijs, postea a consilijs, & varijs legationibus ad exterios Reges & Principes, nec non ab Eleemosynis. Natus est Taoduni in Anguifiâ, servivit Regi suo ac Domino Clementissimo 54 annos & menses 11. ac dies 11, summa cum fide ac integritate, teste conscientiâ, ac testibus omnibus probis qui eum in Aula noverint, ac Omnipotentis Numine gubernantes famulor. Regiorum qui adhuc sunt superstites, diuturnitate facile primus, &c.

*Sic parvis componere magna So-
lebam.*

Permit me to tell your Lordship, we both derive from Embassadors, some incitement to unalterable Zeal

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Zeal, for the Protestant Succession
to the Crown of England.

The Subserviency to which, in
an Homage to the Earl of Ma-
clesfeld, has a sort of Feudal Claim
to your Lordship's Protection.

The Right of this Imperial Crown
to Homage, for the Kingdom of Scot-
land; considering the unforced con-
sequence of it, is a Subject worthy
of a better Pen: Yet my endeavours
may, possibly, meet with the
more favourable reception, as they
explain the nature of this ancient hereditary Monarchy; restore to several
of our Monarchs, those due Honours, of which they have been de-
frauded by the Moderns; and vindicate the injured Memories of William
I. and William III. from the imputations of being Usurpers, or acting
as Conquerors.

Nor is the occasion of such a Vin-
dication over, when, from the Sup-
position

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position that *W. I.* acquired an indefensible right to himself, and the next of his Line, in a constant course of Successions, and that *W. III.* had no Right; Enemies to the publick Peace, who take all to be well if there be but *Union among themselves*, represent her Majesty only as a Trustee for Her putative Brother.

Tho' Bishop Sanderson's Construction of the great Rule, *the safety of the People is the suprem Law*, is not universally true; it must be agreed to be so now. For the interest of all the Subjects of this Monarchy, is bound up in our most excellent Queen; who truly, and rightfully, succeeds our last King, in unbyass'd intentions for the Happiness of all her Subjects, and of all the habitable World.

In her Majesty we see Sir *W. Temple's* Idea of the most perfect Form of Government, verified; which, like

Nota, he
makes it
always to
lie in the
safety of
the Prince
Sand. de .
oblig. con.
scientia.

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like a *Pyramid*, has the largest *Basin*,
but touches Heaven in an indivisible
Point.

As your Lordship has dignified
your self, among the rest of that
Noble Body, who with undivided ad-
ditions of all the good People of En-
land, make the best Court to the
Queen, by following her Whole Pre-
cepts, and bright Example; I doubt
not but your Lordship will make large
Allowances, for an hasty Zeal in the
same Cause; and will pardon a te-
dious Apology, for taking this op-
portunity of publicly professing
that Esteem, and Obligation, with
which I am,

My Lord,

Your Lordship's most faithfully

Devoted humble Servt.

W. Atwood.

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ERRATA.

As in a Treatise of this nature gross Errors of the Press cannot be prevented, many mistakes in Letters, and Points, and the position of Words, may well be left to the Judgment of the Readers. But the following they are desired to Corrett with their Pens.

Page 2. Line 8. for rights read right. p. 30. l. 14. for hand r. land. p. 34. in marg: for Burchan r. Buchan. p. 35. marg. (b) for Col. r. Cot. p. 37. l. 1. before put r. l. p. 39. l. 8. r. easily. 10. marg. after was r. nor. for Bonian r. Banion. p. 47. l. 32. after Cynthia r. aurem. l. 33. d. aurum 10. marg. r. Remembrances. p. 55. l. 7. r. expreis. p. 56. l. 11. r. Foreigners. p. 69. l. 2. r. Clan. p. 88. l. 6. d. had. p. 123. l. 18. r. Kenwall. p. 132. Antepen. r. Saxon. 133. marg. r. Int. to. Script. p. 137. l. 3. r. subject. p. 139. l. 15. for chelv r. Sherif. p. 143. l. 10. for were r. was. l. 23. r. implied. p. 153. l. 10. r. he. p. 155. l. 8. r. Refelin upon Ethelred's Rebellion not in the. p. 166. l. 12. for when r. who p. 167. l. 32. for them r. then. p. 173. l. 14. r. Macismun. p. 174. l. 2. d. or. p. 176. l. 6. n. paths. l. 8. after they, add were. p. 186. l. 2. r. commendavit. 6. for rumours r. rancor. p. 183. l. 7. for dispense r. dispute. p. 192. l. 17. before land r. of. p. 197. l. 29. for Westminster r. Winchester. p. 195. l. 2. r. prerogative. p. 197. l. 2. r. I the 6th. p. 219. l. 9. r. therein specified. p. 221. l. 5. d. all after Justice to [bur] l. 10. p. 265. l. 24. for ply r. play. p. 268. l. 15. after in r. a for policy r. politic. p. 306. l. 27. r. Bona. p. 399. l. 1. r. Ethered. p. 400. l. 14. for to r. of. p. 402. l. 6. for and r. to. p. 417. l. 15. r. Morcar. p. 420. l. 8. r. Saxon. l. 12. r. Morcar. p. 418. l. 4. r. decrees. p. 424. l. 19. for his r. this. p. 427. l. 10. r. the right of conquest. p. 452. l. 24. for sond r. forced. p. 437. l. antepen. for if 2. 22. p. 498. l. 25. r. revived. p. 499. l. 20. for a right r. the right. p. 540. l. 9. d. that before always, insert it after Monarchy.



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The Superiority, and Direct Domination, of the Imperial Crown of England, over the Kingdom of Scotland, &c.

HAVING the Blood of a considerable Family in Scotland, mingled with an Mallett Hereditary Zeal for the Constitution off. 53. Regd the British Monarchy, it may be less ^{usq; gen-} ~~qui utris~~ ascribing to my Countrymen of both Kingdoms, the Honour of being under one ^{tis fanguinem trahit} Imperial Crown, continued to the present Royal Family ^{talē pēramē cum Set-} thro a British Channel, not only of consanguinity, ^{vabo, &c,} but of Laws.

The form of an Act is printed as having passed the *Lords* and *Cousins* of the Parliament of Scotland, to authorize the *States* of that Parliament, to nominate and declare the Successor to the Imperial Crown of that Realm.

Which Epithet I conceive was never before, except in an Act to establish a Divine Right in a Popish Successor, applied to that Crown; tho' the Crown of England, as I shall shew, was duly possessed of such a title long before the reputed Conquest.

Imperial, I take not only to imply an independence from any Kingdom or Power, but Superiority.

rity over some other Crown or Principality. Which sometimes, as will appear, may have been Feudal, only because of Protection, without relation to any grant of the Fee.

Thus when *Wales*, which was never given the British Kings or Princes, by any Saxon or Norman King, came into the more immediate Government of *England*, E. i. says, *Wales* was before subject to him by Feudal Rights.

Davis's
Rep. E.
41. 6.
Prioris no.
bis jure
feodali
Subjecta.

To proceed with the Scotch intended Act, it adds, after mentioning the nomination of a Successor to their supposed Imperial Crown.

' Provided, that the same be not the Successor to the Crown of England, unless there be such conditions of Government settled and enacted, as may secure the Honour and Sovereignty of this Crown and Kingdom, the Freedom, Frequency, and Power of Parliaments; the Religion, Liberty and Trade of the Nation, from English, or any Foreign Influence.'

'Tis further declared,

' That it shall not be in the power of the meeting of States, to name the Successor to the Imperial Crown of that Realm, nor shall the Person be capable to be King or Queen of both Realms, unless a free Communication of Trade, the freedom of Navigation, and the liberty of the Plantations, be fully agreed, by the Parliament and Kingdom of England.'

Not to meddle with the Policies, of which my Superiors are the proper Judges, and may in due time determine for the good of both Nations, I cannot, but think it my duty to lay before them part of that evidence, which may be thought, rather than the force of Arms, to have induced the brave

brave Nation, which now possesses Scotland, as well as their Predecessors *Picts* and *Britons*, both Princes and People, not only in Words, but Indictority of Facts, to have acknowledged the *Superiority*, and *direct Dominion* of the Crown of *England* over all the parts, which have fallen under the denomination of the *Kingdom of Scotland*; in testimony of which their Kings have paid homage both Feudal and Liege, and the People have sworn Allegiance to our Kings.

When this shall have appeared beyond possibility of being fairly denied, I cannot but hope that the Love of Truth, and the Common Interest of both Nations, will perswade my Countrymen and Fellow Denizens, of *Scotland* to admit of the only consequence of *Homage*, of present use to the Crown of *England*; and as I shall shew of great moment to all who have, or expect that they or their Relations shall inherit Lands in *England*; and this so far from being to the dishonour of the *Scotch* Nation, that instead of their being at any time hereafter under a *Fuudatory Prince*, it may secure to them a more immediate relation to the head of the *British Monarchy*; if some great Calamity to both Nations do not divide them. As it has been for the Honour of the *Scots*, that their King has been King of *England*, if thereby *Scotland* became more fully exed, as a Flower in the Imperial Crown of *England*, surely they should not think it more for their Honour, again to have Kings so truly their *Creatures*, as to be made and unmade at their leasures; which their Kings evidently were, or only in the fabulous Reigns 300 Years before our Saviour, but in the times of which our Historians have furnished them with an account.

If while they had distinct Kings of their own, they were Liege Homagers to our Kings, and but *Subreguli* or Viceroy's under them, that by the Accession of their *James* the 6th to the Throne of *England*, the right of their Crown devolved upon the Crown of *England*, and became annexed to it, and that thereby, who-ever duly succeeds to this Crown, will be *ipso facto King or Queen of Scotland*, as I shall shew follows undeniably from the *Feudal Law*; is confessed by their own Writers; and was foreseen and adjudged by *Henry the 7th* and his Council, when he disposed of his Daughter *Margaret* to their *Jamesthe 4th*.

That the Kingdom of *England*, as well as the Crown is interested in this controversy; I have the judgment of a wise Parliament before the time of any one of the Scotch Historians of their side.

For, upon the Pope's admonishing *E. 1.* to desist from the exercice of his *direct Dominia* over *Scotland*, which the Pope claim'd as a *Fee of Holy Churcb*; the Parliament declared this *sente to the disherison of the Right of the Crown, the Right of which they were bound by their Oaths to defend* and they neither would, nor ought to permit the King to quit that right, if he would.

And this will appear to have been the judgment of another wise Parliament near 250 years after that of *E. 1.* yet our *Modems* not only give this up, but plainly suppose *E. 1.* and his Parliament, to have been guilty of the grossest fraud imaginable, when they solemnly assure the Pope, that from the most Ancient times; 'the very first Institution or erection of a Kingdom here, as well in the times of the Britons as

An.
1301.
29.
Vid. Inf.

' the ~~Saxon~~ downwards, the Kings of this King-
dom of England, were over the Kings and
Kingdom of Scotland, in right of Superiority
and direct Dominion. And of who in former
times they knew.

This the Lords and Commons affirmed that
they knew.
The King shewed, that in consequence of this
our Kings had in several Ages successively, re-
ceived Liege Homage and Oaths of Fidelity from
those Kings, for the Kingdom of Scotland, and
from what Peers of the Kingdom they thought
fit.

It must be owned, that a late diligent Historian
has denied, that Homage was done for the King-
dom of Scotland before Henry 2ds time; and our
Historiographer having caused a Charter of Mal-
colm King of Scots, testifying his having done Ho-
mage for his Kingdom to Edward the Confessor, to
be engraven; My Worthy and Learned Friend,
Mr. Tyrrel, distrusting an Ancient Writer, whose
Authority he receives for every thing else, fur-
nished Mr. Ridpath with his main objection a-
gainst that Charter; from what Authors less to
be credited in that particular, say, concerning
Malcolm's Marriage with Margaret, who is men-
tioned as advising and consenting to that Char-
ter. Mr. Ridpath having learned such a supposed
uncontrollable evidence of its Forgery, tho at
the best 'tis an averment against a Record, disal-
lowed by Reason, as well as by our Law; takes
this occasion to Translate and Publish a Book of
Sir Thomas Craig's, who was content with the re-
putation he had got by his Book of Feuds, without
Publishing his invective against our Hollinshead;
for doing the part of a faithful English Historian,
in relation to one of the principal Flowers of

the Crown ; in which he had the ingenuity to own he was assisted by a Lawyer, whom Sir Thomas, according to the Liberty he might take in a Writing, fit only to be handed about among his own Countrymen, reproachfully calls Petty-fogger.

Perhaps it will appear, that for want of knowledge in the Common Law of England, some eminent Writers have mistaken the plainest and most remarkable passages in our Histories ; and on the other side Men of great name in the Law, and memory of what they find reported in Law Books, know little of the true grounds of the most solemn Judgments, relating to Publick and Private Inheritances.

And while they contemn all enquiries into Records and Histories, for Studies so chargeable, and remote from gain ; render themselves no otherwise fit Subjects for History than in respect to their great Estates, got by what a Writer of no mean Reputation calls, the *Mercenary part of the divitium. Law.*

C H A P. II.

Sir Thomas Craig's quotations against himself, of two Eminent Foreign Writers. They shew Comptent Judges. His censure of the British and English Antiquities. A short comparison of the Authorities on both sides.

p. 3. & 4. **S**ir Thomas Craig says, he should have slighted what Hollinshead mentions very often in the Body of his History, of the Kings of Scotland ha-

ving

ving paid Homage to the King of England, if Bodin had not fallen into that same error, as he calls it, by reading the English Histories; for he writes, ‘that the Kings of Scots did formerly acknowledge the Kings of England as their Liege Lord.

Bodin, as is well known, was a French Author, whose Authority has been cited by many, as the Standard for Notions of Government, and the Rights of the several Kingdoms which fell under his consideration. He was a Lawyer, a Native of Angiers, of whom it is writ, that his versal application to Learning made him poor in all things, but Reputation. He dyed in the year 1585. the 27th of Queen Elizabeth.

Sir Thomas Craig addis,

‘And Bernard Gerard, a Modern French Historian in Philippo, 1 lib. 7. asserts that Scotland is a Foe Liege of England, altho’ the Scots do at this time deny it.

This is meant of the time of his Writing, not that it was questioned but agreed in the time of Philip the first, who as he succeeded his Father H. I. in the year 1060. was contemporary with our Edward the Confessor.

These are no mean testimonies, considering the reputation of the Authors, and that they were of a Nation concerned to flatter the Scots, and which had so large a share in the Publick Transactions between England and Scotland, that Bodin, and particularly Gerard, who writ an exact and admirable History of his own Country, could not but be fully appriz’d of the Authorities insisted on by the English, and barely denied by the Scots, since they first set up for Allies to France; which, as it made use of the Scots to divert

vert the force of *England* from prosecuting the right of that Crown to the Kingdom of *France*, would have readily embraced them as *Allies*; were they not aware of the dangerous consequence, of insisting upon the right of any such Alliance, to derogate from the known right of *Homage*.

That this was so known in *France*, and every where throughout *Europe*, where it happen'd to be considered, is put past a possibility of reply by our learned *Historiographer*, in his demonstrative refutation of the fictitious League between *Charlemain*, and an imaginary *Scotch King* within *Britain*, while there could be no such King but in *Ireland*; as will appear before I have done with this subject.

Our *Historiographer* having mentioned the League between *John Baliol* and *Philip the Beau*, King of *France*, says,

Second Lett.
.. p. 12.
 ‘ Sometime after a Peace is negotiated betwixt
 ‘ *France* and *England*. And now the main diffi-
 ‘ culty was, whether *John Baliol* and his Subjects
 ‘ were comprehended in the word *Allies* of
 ‘ *France*.

Vid. inf.
✓ E. i.
 ‘ King *Edward* maintained that *John Baliol* was
 ‘ his *Vassal*, and therefore was incapable, and
 ‘ could make no *Alliance*.

‘ The King of *France*, the Pope and his Cardinals
 ‘ (all employed in the Treaty) gave up the point
 ‘ to King *Edward*.

‘ An expedient was agreed to, that King *Edw.*
 ‘ should grant a truce or abstinence of War to the
 ‘ *Scots*, at the prayer and request of King *Philip*, not
 ‘ as an *ally* of the *Scots*, but as their Friend and
 ‘ Interposer, who takes himself no way at all to
 ‘ be allied to them. *Ala priere & ala requeste de-*
mesma

mesme le Roy de Franco, come a amy, & amiable
Compositeur, & Nemise come a Allie a ceux d'Escoce,
Mais come a celuy que de ryens Je tyens Allie a
eux.

This was not only a sufficient Warrant for Bodin and Gerard to hold, the one that Scotland was a Fee Liege of England, the other that the King of the Scots acknowledged the King of England as their Liege Lord; but shews it to have been the uncorrupted judgment of the Pope, whose Authority is urged for their independency, and even of the King of France; who would have been glad of any shadow of a pretence, to treat with the Kings of Scotland, as Allies and independent Princes.

As to our English History Sir T. C. says, ' most Sir T. C.
' of what we find in it before the Conquest is p. 34.
' vain and trifling, and almost all of it uncertain,
' except what is writ by the Roman Historians,
' and Gildas or Bede.

Yet he soon contradicts himself, and adds, p. 39. Etbelward, who, he says, flourished about 1090. but did above 100 years before: The fragment of Ingulph, he will not allow to be an History; and is positive, knowing no better, that Afferius Menevensis wrote only concerning the Transactions of King Alfred.

This he takes to be all the light we have since Bede's own, indeed, that Florence of Worcester (whom he places about the year 1148, whereas he dyed in the year 1119. which was the 19th of H. I. and except that he was an English Monk, is liable to none of the objections made by Sir Thomas Craig against the English Historians says, ' he Sir T. C. had left things to posterity, either as he found them in the text of the English Chronicles, or as he

he had them from the relations of Men worthy
of Credit, or heard and saw them himself.

As to what concerns the Text of the English
Chronicles, Sir Thomas will have it, that Florence
mentions them, that he may deceive his Reader
with the greater facility; for, says he, if there
was any Chronicle of those times, seeing Flo-
rence lived about the year 1148, they must still
remain in the Archives, which hitherto no
English Author did ever alledge, or hath been able
to demonstrate, for that Chronicle did only set
down the number of years.

As Sir Thomas is full of Errors, in all his at-
tempts to give any account of our English Anti-
quities, here he fails in several particulars.

1. In supposing that Florence lived and writ
about the year 1148. which is a mistake of 29
years, as he mistook above 100 years concerning
the time of Ethelwerd.

2. Tho' he would seem to argue, that no such
Chronicle as Florence cites, remains in our Archives,
he admits there was one; but then as appears,
having never seen it, or concealing what he
could not but have observed, if he had seen it, he
would have it thought to be so imperfect, as
to set down nothing but the number of years. I shall
often have occasion to shew much more out of it;
but it may be sufficient here to produce an undeni-
able evidence, that Florence corrected Bede by
the Saxon Chronicle, and that we have now the
very same Chronicle which he made use of.

In the year 672. according to the Dionysian ac-
count he has this passage.

*Kenwalchius Rex West-
Saxonum 30 anno Regni
sui defunctus est. Hujus ux-
or Sexburga Regina secun-
dum Anglicam Chronicam
anno post illum regnauit An-
no. Secundum vero Bedam
Subreguli regnum inter se
divisum annis circiter de-
cem tenuerunt.*

*Kenwalch, King of Flor.
the West Saxons, died Wig. f.
in the 30th year of
his Reign, His Wife
Queen Sexburga, accord-
ing to the English Cbro-
nicle Reigned one year
after him. But ac-
cording to Bede under-
King, held the King-
dom divided among
them about ten years.*

The Saxon Chronicle of this very year says, An. 672.
*Her forþ-ferde Cenwalh Cing & Seaxburh, beald an
gear rice bis Cwen aefter him.*

3. Besides, what appears by comparing Flo-
rence with the Saxon Chronicle ; 'tis plainly, this
Monk of Worcester, to whom Gemeticensis of the
time of H. i. or King Stephen, attests, that he was Gemeti-
an English man by Birth, venerable for his Man- censis £
ners and Learning : in those things which he ^{504.}
added to the Chronicles of Marianus Scotus of
King Wm. and of Transactions under him, or
under his Sons, the Kings Wm. and Henry, he
honestly produced them.

Then after an account of Marianus, returning
to the Monk of Worcester, he adds,

*Solertor itaq; perseru-
tatis veteribus & Mo-
dernis codicibus Chrono-
graphicis edidit, &c.*

Therefore the An-
cient and Modern
Books of Chronolo-
gy, being diligently
searched, he publish'd
his.

Sir

Sir Thomas Craig would be thought to believe, that the Monk of Worcester, is the very first that can be produced, who writ of the Homage and Fealty for the Kingdom of Scotland; which if he were, being of a time not in the least to be suspected, and when he could not but have had full information, his Testimony could not reasonably be objected against; and yet there will appear such plenty of other Authorities, that it must be agreed there is no need of using his.

p. 45.

As to the nature of all the Evidence, Sir Thomas supposes it chargeable with 3 faults. 1. That 'tis Monkish. 2. Domestic. 3. The Testimony of one Enemy against another, as the times then were.

*Na he was
of the Sax-
on Blood
Royal and
Questor or
Treasurer to
King Ed-
gar, or else
to the then
Duke of
Flanders,
to whose
Duchess
his Cousin, he
dedicates
his Book.*

p. 42.

The last objection is struck off, by observing the true times when the Monk of Worcester and Ethelwold writ, and if Ethelwold prove a full authority against the Scots, that will remove the first objection; as Sir Thomas himself has confounded the ad, in giving the Testimonies of Bodin and Gerard, and occasioning further evidence from France.

The course of the Authorities which I shall produce, in confirmation of the Testimony of the Antient Friends of Scotland, the French, will make it evident, that Sir T. C. was either very little acquainted with the merits of the Cause, or endeavour'd to conceal them; and yet himself has admitted Authorities sufficient to convince all who do not wilfully shut their eyes.

He tells us, 'the Scope of the whole is this, that there's no perfect nor authentick English History, and that there's no authority nor certain proof as to matters of moment before H. the 1st time, when Authors began to commit Publick Transactions to Writing, except Gildas, Bede and Ethelwold.'

How

How far this Character will agree with what I shall produce, the World will judge, and I believe I might refer it to the decision of some, who have strenuously held, that there never was Homage done to the Crown of *England* for the Kingdom of *Scotland*, before the Reign of H. 2d.

A very Learned Gentleman, who has given considerable light to the *English History*, being of this opinion, I may the rather entreat him to apply his own quotation out of *Fordon*, for the further credit to what I shall produce.

Fordon in his Prologue to the *Scotch History* says.

Pref. to
Mr Tyr-
rel's, 1 vol.
of the En-
glish His-
tory, f. 21,

' He had heard it was very well ordered in *England*, that every Monastery of Royal Foundation should have its particular Writer, who was Chronologically to set down all the memorable things, which hapned in each King's Reign, either in their own or neighbouring Kingdoms; and that at the next great Council, after the death of every respective King, each of those Chronographers met there, and produced whatsoever they had so remarked, and that some of the most discreet persons in the said Council, who were best skilled in such matters, being chosen for that purpose, should examine these Memorials, and by comparing them together, should extract a brief Chronicle from them all, which was to be preserved in the Libraries of those Monasteries as Antientick Annals to be relied on by posterity, that so the remembrance of those Publick Affairs, might not be lost or devoured by the rust of time.

Whoever observes the exact agreement in the main, and in the very expressions in the several Registers, and how our Historians have, by one of the wisest of our Kings and his Parliament,

been

been appealed to as Authentick Records, cannot doubt of the truth of *Fordon's* observation: and here is the testimony of the *Father* of the Scotch Historians, that whatever can be produced from our *Registers* before his time, is to be rely'd on, not as the evidence of *Monks*, but of Committees of *English Parliaments*.

And yet I am well aware with what prejudice every thing of this kind which I shall offer, is likely to be entertained by Men, who will fancy even Charters, concurring with Histories of, and nearest the Times, to be Forged; when it may be evident there was no manner of occasion for any such forgery: and yet as I shall shew, they swallow the grossest fictions, of which no foot-steps ever appeared till the moment of their late production, and contrary not only to their own Historians, but to Records of both Kingdoms.

If we compare Historian with Historian, ours will appear, some of the very Times; others early and exact Transcribers of what was register'd by Men who knew the facts. Some of which Authorities are unwarily received by Men, who oppose what themselves exhibit, and the most considerable passages are confirmed by Charters,

Scotch Hist. Lib. and other undoubted Records and documents as the *Scots* call them. On the other side, *p. 71. 75.* *Vid. Gor.* except *Veremund* and *Cornelius* of *Ireland*, no where *conuenient* to be found but in the Romance of *Hector Bot-Straloch* *tibus* and in his Followers, and except *Mariannus* *de illis.* *Nemo vi.* *Sextus*, born in the year 1618. (whose *Chronicle* *vit qui illi* is of sufficient Antiquity, and undeniable Evidence of the right of the Crown of *England*, *et de hoc* the *Scots* cannot pretend to any one Historian extant, older than their *Fordon*, who Writ in the

14th Century after Christ ; unless they take in the Compiler or Compilers of the Register of the Abby of Mailross, within that which now obtains the name of Scotland.

But it will appear, that they will be very loath to do this, without very gross interpolations ; That Register not only shewing that the Scots have been so far from holding the Succession of their Kings Sacred, that they used to make themselves Lords over the Lives of those truly humane Creatures, and if they called them Gods, forced them to dye like Men ; but, as the Beings of their Kings were by themselves rendred precarious, they thought it no diminution to the Honour of those Nominal Kings, nor of their Superior States of the Realm, to do Homage, and Swear Allegiance, to the head of the British Monarchy.

The pretence, that this was only for *Lands* held within the present bounds of the Kingdom of *England*, as it is founded only upon the affirmations and qualifications of the fact, by their Historians, the earliest of which was *Fordon* ; it will appear, that all the *Scots* who now oppose the *Right of the Crown of England*, will and must reject all their own Historians, *Fordon* himself not excepted, in matters of the greatest consequence and notoriety, within his own time and observation.

These things, as they might have been obvious to any Body, who in the least attends to what he reads, it may seem unaccountable how our Moderns, and particularly a Learned Bishop, should think the most fully-attested Truths of the *Right of the Crown of England* fables, and fables of late invention, the Authors of which every man may point at, the most undeniable truths.

Of

Of this since I doubt not, but I shall satisfie the most scrupulous, I may hope for pardon in being a little free with an Episcopal Authority; especially since I not only assert the right of the Crown of England, according to the Duty of my Allegiance; but of the *Metropolitical See of Canterbury.*

C H A P. III.

The Heads undertaken to be made good. The Bishop of Carlisle's account of Sir T. C. Book concerning Homage, with short Remarks.

TO set the Controversy in a true light,
1. I shall give the other side the advantage of an English Prelate's Testimony for them, but shall make some short remarks to take off from that Authority.

2. Shall shew, that the admired *Advocate* for the Scotch Independency, ignorantly hit upon the right Question, but departed from it, not understanding the terms of his own Question.

3. Shall make it evident, that *Homage* merely Feudall was so early in England, that his objection from the supposed Novelty even of that *Homage* (which will not concern the question of *Liege Homage*) will appear groundless.

4. Shall set the Scotch *Advocate* to give a full answer to all his own negative conjectural arguments, and shall support that answer with the Suffrage of their *Bishop Lesley*, Embassador here in Queen Elizabeth's time.

Elizabeth's time ; and fully informed upon what ground the English Lawyers, and Learned Men maintained that Homage was due.

5. Shall shew, that what is now called Scotland, was within the British Monarchy.

6. That upon, and after the Translation of the Monarchy to the Saxons and Danes, and during that Period of time ; the Scots were Subjects of it, their Kings paid Liege Homage for the Kingdom, and both they and their Subjects Swore Allegiance.

7. That this Homage and Subjection was lawfully transferred to our Kings of the Norman Race ; and acknowledged and evidenced by No-
riety of facts.

8. That the Scots, from within the British times onwards, were not only under the Crown of England, by reason of Allegiance to the persons of our Monarchs, but to the Laws of the Kingdom. Wherein I shall shew, that the true point in Calvin's case 7^o Jac. 1; and the legal consequence of it was then mistaken or drop'd : and that, according to the last Judgment in Point, in Conformity to more Ancient Authorities, Scotland is of right within the Allegiance of the Crown of England.

9. That the Subjection evidenced by Liege Homage, is still due to the Crown of England.

10. That her present Majesty is possess'd of the Imperial Crown of this Realm, with its appendages, by Divine Right, not to be distinguished from the Civil.

11. That her Majesty is rightfully seized of the Inheritance of the Crowns of England and Scotland, to her and her Heirs and Successors, according to the English Act of Settlement.

12. That the Scotch Nation are bound in Honour, and for their own Interest, and that of Europe, as well as in the right of the Thing; to comply with the just and happy Consequence of their having from of old, been Subjects and Homagers to this Monarchy.

(a) Bishop
of Cat-
telle's
Scotch
Hist. Libr.
p. 376.

How this an-
grees with
acknowl-
edging the
Laws of
Malcolm
the ad to
de Authoris-
tie Iean:
not see:
(b) p. 377.
P. 378.

1. The present Bishop of Carlisle, tho' himself had made a very (a) material objection against Sir Thomas Craig's notion of the *Fudal Law*, thinks fit to receive him as an Oracle upon our present question.

' There's, (b) says he, another elaborate Tru-
lffe of the same Author's composition, which
bears the short title *de hominibus*, proving that the
Kings of Scotland never paid, nor owed any Ho-
mages to those of England.

Having censured our Historiographer, for publishing Malcolm's Charter of Homage for the Kingdom of Scotland; he adds,

' Which Mr Ridpath the Translator of Sir T.C. Book, has deservedly exposed, and convicted of Notorious and undeniable marks of Forgery. To prevent any Calumny that might hereafter be raised of the like kind, it was thought convenient to publish this Book in the English Tongue, that the Subjects of both Kingdoms might discern on what equal Terms their Ancestors stood. The Author proves that Homage, and Liege Fief were not known in this part of the World before the days of Charles the Great, nor was there any King in England big enough to demand any such thing before Egbert. The Testimonies which our Historians give of the matter, ought (as he thinks) to be rejected, as being Monkish, Domestic, and Partial. Having abundantly shewn, that the Realm of Scotland could no

Scotch
Hist. Lib.
p. 378.

' po
ic old

possibly be held a Fee in Vassalage under England, because of the constant enmity of the Nations, the rest of his pains (in convincing us that neither the Ancient Britons, Saxons, or Normans, were ever such Superior Lords of that Kingdom, as our Men have pretended) might have been spared.

His Lordship may pardon my observing,

1. That he is so very favourable to the Scots Negative, as to suppose Sir T. C. had proved, that the Kings of Scotland never had paid nor owed any Homage to those of England: whereas Sir T. and all their Authors own, that Homage was both due and paid; but they have pretended it was for Lands in England, which being taken from them, they argue that the ground of the Homage fails.

2. Whereas his Lordship supposes it prov'd, that Homage and Liege Fees were not known in his part of the World, before the days of Charles the Great, with whom the Scots will have it that they made * a League about the year 792, it will appear by what follows, that we had such Fees ^{Vid. Mr Rimer's Direction of that Forgery, 2d Letter to the Bishop of Carlile p. 2, &c.} ere before that time: and tho his Lordship might not think, that the Laws of composing an Historical Library, would have obliged him to take notice where a favourite Author contradicts, and in effect renounces a fundamental Proposition: his Lordship would not have been so much assur'd of Sir T. C's being in the right, in his Notion of the late introduction of the Feudal Law here, if his Lordship had observed, that after Dr Brady had form'd a killing Argument of a Conquest in his positive assertion, that W. I. brought the Feudal Law hither, and thereby made a total change of the old Saxon Property; he, or one of his Assist-

Vid. In
Appendix
to the 1st
part of his
Bumpus.
H. J. where
he gives up
the contro-
versy with
W. A.

ants, whose pains he had as unluckily used in translating and pointing King John's Charter; has, in an elaborate discourse, knocked all on the head, by proving all manner of Tenures, and other Incidents to the *Mund Law*, to have been here in the time of the *Saxons*.

If his Lordship could not recollect what might have been at a distance when he writ; it might be thought his great Judgment, and Application in other matters, would have led him to observe that the admired Sir T. C. receives such Authorities, as demonstrate the Superiority of the Crown of England over the Kingdom of Scotland. For where Authorities are received, and the only question is about the Sense of them, the true Sense is as capable of demonstration, as any proposition in Euclid; and such Authorities will appear on this Subject.

Vid. The
English
Hist. Lib.

4. His Lordship having formerly given Dr Brady the advantage of his Eulogy, as a prejudice against the Writings of such weak opposers as myself; I may with the greater Freedom beg his Lordship to read Dr Brady a little more carefully to see whether there was not often a *Rex primus* first or chief King, before King Egbert, big enough to receive Homage for the Kingdom of Scotland.

Vid. Dr
Brady's
compleat
History.

5. I may recommend to his Lordship, the reading the fam'd Ecclesiastical Historian Bede besides others; and submit it to his Lordship's second thoughts, whether the quarrels between the Nations have been so constant, as to give colour to the imagination, that the *Realm of Scotland* could not possibly be a *Fee under England*.

C H A P. IV.

The true Question. Sir T. C's. mistake of his own Terms.

THE Dispute is not about Words, but things; and therefore 'tis not about Final Terms, with which this controversy has been perplexed of late; but whether the Kings of that part, which has long gone by the name of England, have a truly Imperial Crown in respect to Scotland; whether that be within this Empire; and whether the Prince and People of those parts, which now pass for Scotland, have from the first creation of the Monarchy here, or since, been under any bond of Fidelity or Allegiance, to maintain the Peace and Dignity of the Crown of this Kingdom. The attending to this Question, and the Evidences to prove it, confess'd by the other side, might make this controversy very short; but since the World is apt to swallow whatever is confidently affirmed, by Men of Reputation for Learning; one who pretends to no share of that Reputation, is under the greater necessity of encountering assertions, with Proofs, and to give heaps of 'em, to remove the suspicion, that might lye upon any single Witness.

I may be thought a bold Man to affirm, S. His. L.
p. 277. that the Learned Bishop did not attend, to Sir T. Craig's state of the Question; and that Sir T. did not understand the Terms. 'Tis plain he did not contend, as the Bishop supposes, that the Kings of Scotland never paid, nor owed any Homage to those of England, but his state of the Question is,

De homi- Whether the Kingdom of Scotland be a Fee
nio c. 2. Liege of the Kingdom of England, and whether
Sir T. C'. the King of Scotland owes, or ever did pay Ho-
Homage to the King of England upon that account.

Vid. 7. Here one would think by his putting the Que-
rep. f. 7. in stion, that he was appriz'd of the known distinc-
Calvin's tion between *Feudal* and *Liege Homage*; the first of
case. which was according to the *Feudal Law*, due by
 reason of a *Feud*; the other by the *Law of Su-
 periority and Subjection, Prior to Feudal Right.*

Sir T. C'. *Homage*, Sir Thomas thus defines, *Homage* is a
def. of Ho- *Profession* which the *Vassal* is obliged to make un-
mage, p. 11. to his *Lord* by *Oath*, upon the account of some
 ' benefit received.

p. 12. By a *Benefit*, he shews, that he means a *Fee*.
 Those things are *relatives*, and the one cannot be
 without the other, I mean, says he, a *Fee* or
Benefit and Homage.

p. 13. He neglects what he had observed from the
 Practice and *Etymology*; which, as he owns, is
 the *action and profession* of a *Man*, and is no other
 than a *Man's* professing himself to be his *Lord's*
Man, and promising to perform his *Military*
Service faithfully when required, and sometimes
 also when he is not required.

After such a state of the Question, and observa-
 tion of the usage and *Etymology* of *Homage*, it
 might have been thought impossible for him to
 groap in perfect darkness, as if he had not been
 acquainted with the first rudiments of the *Feudal*
Law.

Thro this he values himself for differing from
 most Learned Men.

Sir T. C. I know, says he, that most Learned Men are
p. 13. of a different opinion, and distinguish *Homage*
 from *Fidelity* thus, that the former is transacted
 with

' with more veneration than the latter, that so they
 ' may make the Oath of Homage distinct from that
 ' of Fealty ; and they require two Oaths, whereas
 ' there is only one needful in Law ; but by their
 ' leave, I make bold to say it is not so, for there
 ' was only one Oath, the form of which was two-
 ' fold in Law.

But *cum pace tanti viri, form makes essence* : and
 an Oath or Oaths of two forms must be two Oaths.
 Had he but the good luck to hit upon the differ-
 ence between manner and form, he would not so
 long have puzzled his Head about this Matter ;
 especially, if he had attended to what needs no
 more to be proved than first principles, that (a) ^(a) *Inf.*
Federal Homage, of which he makes the Question,
 was never *Sworn*, and therefore; was perform'd
 by (b) Infants ; which *Fealty* never was. Because ^(b) *lb. f.*
 of the Oath there, *Fealty* was said to be *Sworn*,
 and *Homage done*.

It will appear plainly by our *Feudal Law*, which
 must determine all disputes here about Feuds, that
Homage was due upon the account of protection
 only, as well as for a *Feud or Fee*, received from
 the Person, to whom the *Homage* was performed.

But all that *Feudal Homage* which was done to
 Subjects, was ever with a *Salvo* for the *Fidelity*
 which the Party owed the *King*; and therefore, Vid. Lib.
 if at any time the *King* took *Homage* only, he Rub. in
 might require the *Oath of Allegiance* of every one Scaccar c.
 within his Dominions, at the Age of 12 as some 35. & Lit.
 hold, of 14 as others ; which is but suitable to ^{1 Inf. f.}
 what the Law requires between Subject and Sub- ^{150.}
 ject, for *Fealty* is an inseparable incident to *Homage*.

But then the *Homage* to the *King* was always
 a profession of *Subjection* and *Allegiance*, accord-
 ing to the form of the *Homage* of the Tempo-

Letters
y. 196.
Cap. 7. p.
19.

pal Lords, to be seen in Sir H. Spelman's Glossary.

' I N. N. become your Liege Man of Life and Limb, and of Earthly Worship ; and Faith, and Truth, I shall bear unto you, to live and dye against all manner of Folk, So God me help.

Tho Sir T. C. has mistaken both the Nature of Homage, and for what it was due ; he raises, as he fancies, a noble Structure upon this Foundation, and thinks to prove his Negative from

Cap. 7. p.
19.

the nature of a *Few* or *Fee* ; for, says he, ' by the Feudal Law it is not possible that *Scotland* can be a *Few* of *England*, or that ever the King of *Scotland* could be a *Vassal* thereof, or the King of *England* his *Superior*. For a *Fee* comes from the *Lord*, and is wholly owing to his Liberality and Bounty, who settles some part of his Patri-mony upon his *Vassal* or faithful Servant.

Now if protection may be a cause of Homage, or there may have been subjection before the notion of feudal Homage obtained, all this will appear to be besides the Question. However, Sir T. C. going upon the supposition that the Superiority claimed by the Crown of *England*, was merely feudal ; 'tis of mighty service to him to suppose, that *England* has been a Conquered Nation (the contrary to which I shall here sufficiently shew, and may live to prove at large) and he will have it, that Homage could never have been here before the time of W. 1. who, as he fancies, brought in the *Feudal Law*, and that it so far obtained, that ' the English at present are governed by no other than the *Norman Law*.

Some learned Men of our Nation, and all who servily Copy after others, without examining into the Grounds of random general assertions, having run into this error, supported by the Au-

tho

uthority of no less a Man than Sir H. Spelman, whose bigotry I may say, if the posthumous Works in his Name are genuine, blinded his otherwise exact Judgment in all points of Learning) it cannot be thought a Digression to produce some of those many evidences of the use of the *Feudal Law* here, and the Nature of it in the Saxon times, which may not only shew it far from improbable, that our Kings should exact from the Kings of the Scots, such *Homage* as was known in the *Feudal Law*; but that in this, as in other particulars, W. I. did no more than assert the Ancient Right of the Crown: and in maintaining the *Feudal Law* here, with its incidents, he was a true defender of the *old English Laws*, according to his Coronation Oath: Of which, I can make appear, he was a careful observer in the main; the greatest Severities which the Monks lay to his charge, having been with the consent of the Nation, gladly concurring with him, to abate the Power of the Romish Clergy, who had then a third part of the Nation within their *Fends*.

C H A P. V.

Of the Feudal Law here in the Saxon Times, particularly Homage, and the Nature of it. Several entries in Domes-day Book, shewing Str Thomas Craig's gross mistakes, and disproving the supposition from the use of that Law, that W. I. was a Conqueror.

Lege Homage, as the Lord Coke observes, is due to the King only, because he is sovereign over all; and as Bracton, a Learned Judge in the Reign of Henry the 3d has it,

*Soli Regi debetur frou
Dominio free servitio.*

E. i
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Is due to the King alone, whether in Demeasne or Service.

This, according to a distinction in use long before the reputed Conquest, as indubitable Charter of Ancient Kings evince, may be explained by *Inland*, which was in the *Lords* hands, or taken care of by his *Præpositus* or *Bayliff*, and comprehended all within the same *Feud* or *Fee*, tho the service of the Feudal Tenants were never so free and *outland*, which, if not always, at least sometimes was wholly separated from the *Fee* or the *Lords* *Demeasne*; which, whatever some think had *Military Tenants*, as well as *Socagers*, so annexed to the *Fee*, that they could not free themselves and their *Lands* from it, without particular Licence from the *Lord* of the *Fee*. But others whose Estates were *outland*, or only in *Service*, rendered Services sometimes only to the person of a *Great Lord*; and the King himself had some Tenants, who, tho there was no *Lord* between them and him, did not hold of his Person or Crown, but of

Vid. Mag. some *Honour*, which had come to the *Crown*; and Chart. 2. those services to the *Honour* were not merged, or altered to *Tenure in chief*, but continued as services to the *Honour*, which was a *Taintland* or *Barony*, granted out from the *Crown*, for our appearance from the first division of Lands here. The *Barons*, or *Barons* themselves, held in *chief* of the King's Person or *Crown*: they sometimes granted away part of their *fee* so freely, that it was lawful for the Tenants in the *wilmetum* to go whither they would, as we see in *Domesday Book*, giving an account of the *Lands* and *Tenures*.

E. in the time of *Edward the Confessor*, and the
ancient Customs of Cities and Buroughs.

They who might go whither they would, are
often said to go whither they would with their
Land ; not that they could carry away their Land
with them ; but part with it, or put themselves
and their Land under the protection of whom
they pleased. This was *commendare se*, to recom-
mend or submit themselves to such a *Protection* :
and the Person who had thus recommended or
submitted himself was called *commendatus*. Some
of them are said to hold only *commendatione*, which
word was used Synonymously with *Homage*.

This is the reason of the distinction of the great-
and less *Tenants in chief* ; and in *Domes-day*
Book we find *Tenants in chief*, of very small par-
cels of Land.

Would be too long a digression from the
principal subject of this *Treatise*, to give those
numerous instances, which may shew how Sir
Henry Spelman and other Learned Men, have
lumbered in their Notions of the *Fudal Law*,
or want of carefully perusing *Domes-day Book*.

I shall only touch upon the proof that we had
Homage here both in substance, and in terms in
the *Saxon times* ; that this did not necessarily infer
the *Homager* to be within the immediate *Fief* of
the King or Lord, to whom he did *Homage* ; that
not only this, but all the other incidents to Ten-
ure were here in those times, and that *W. T.*
was so far from altering the *Tenures*, that the
very Estates to which they related, remained to
anon Proprietor, in their former plait ; some,
part of great Fees, others separated from them,
the owners of which did *Homage*, for the sake of
Protection ; but owed no other service than *Ho-*
mage que.

Vid. *Jur.*
Anglor.
ab Anti-
que.

image implied. Till there be occasion for further proof of what I have here observed, the following entries in *Domesday Book*, with some strictures, may be sufficient.

To begin with the County where I was born

Writtle

*Effex Lit.
sie Domes-
day Book
Hund de
Clemeres
fort
Chelms-
ford,
Writsalam
Writtle.
* The first
Earl Eu-
gine was*

*In gelricus præoccupa-
vit 2 bidas de terra præ-
positi Haroldi reddentes
omnes consuetudines bule
Manerio Scilicet n*iii.*
lib. postquam Rex venit
in Angliam, & tenet
Coronam Eustachius ideo
quod Antecessor ejus inde-
fuit Selitus.*

Ingelric intruded upon two Hides of Land of Harold's Bayliff, yielding all Customs to the Manor, viz. 12 l. after that the King came into England, and now Eustace holds it, because his Ancestor was felon of it.

Here 'tis observable,

That Whistle is Ancient Demesne, which Her coming to the Crown kept in Demesne, and occupied by his Bayliff.

of Beleigh 2. That *Ingeleis*, who was a *Saxon* here before
which was the time of *W. I.*, possessed himself of Land with
then an English in that King's own *Mannor*.

3. Tho this was unduly, 'twas not restored
This was in the Crown; but to Earl Eustace, who was sett
the Crown here in the Confessor's Time: and that because
in H. 3d Ancestor was seized. So that King W. restored
time.
a Saxon Biscayter land which the possessor of

**Vid. Mag. & Simon Proprietor, and which the possessor of
Chancery Crown had unduly seized.**

Further of the same Manor.

XIII. dedit Haroldus
Culdam pro suos. S. Hun-
dret milieit si dederit libera

in elemosina quia mo-
tenet R. Episcopus He-
fordiensis,

whether he gave it to
hold freely, or in Franc-
almign, because now
R. Bishop of Hereford
holds it.

Tho Harold was truly an Usurper, not being
the Royal Family, nor Crowned with a Natio-
nal Consent; yet, as he was Dominus pro tempore of a
Mannor in the Crown, his grant was held good.
Further yet in Tendring Hundred.

Huic M. pertinebat
R. E. Bereunita de 4
Hides quam invasit Engel-
erius idem tenet Comiti En-
gelandius Pertinebant ad
eum 2 Soc. tenentes, 1 Hid.
2 Virg. & 3 Acres
Rogerus de
lamb pro escangio ut di-
vidatur, & inde vocat libera-
rum suorum.

To this Mannor there
appertained one Berry,
or Mesnalty, of 4 Hides,
which Engelrie had by
disselisin. Earl Bussace
holds it. There have
belonged to it to this
time 2 Soemen hold-
ing 1 Hide and a yard
Lands and 3 Acres,
whom Roger Bows has
by Exchange, as he says,
and for that vouches
Swain, who gave him
Selsin.

I may observe here,

1. That the 2 Soemen held so little Land, that
certainly was, as it had been rated in the Hidage;
and therefore some Land which did Knights ser-
vice, nunquam fuit bidata, was never bidated or Val. Domini
But the reckoned by Hides; and some tho the Hides it day Book
not contained are mentioned, is expressly said to be throughout,
valued at fewer Hides, by reason of such service.

2. The

2. The present possessor of the Berry, who is most probable, was a *Saxon*, had it upon *Saxon Title*, an *Execution* executed by *Livery*.

3. Which is most remarkable; the *Livery* was according to the *Saxon usage*, by the *Sheriff*, and that *Sheriff* was an *old Saxon*, who upon some account was for a time at least* deprived of the Office; but when the Survey was made, was a very great Proprietor.

This was *Swans of Effen*, Son of *Robert*, the Son of *Wimare*, by Inheritance from whom the Son seems to have been *Sheriff*.

For I find this memorable Entry under the hand of *Grime the Bayliff*.

* Little
D. f. i. 6.
Suenus
inde ab-
stulit
postquam
perdidit
Vice co-
mitatum.
Ib. f. 98.

In Burn habet Grimus
2 bidas in quibus erat. i.
Car & 2 Serv &c. de
ipsis 2 Hides est una de
homini bus foris factis er-
ga Regem post adventum
Regis; addidit Grimus
ad suam aliam terram,
per Robertum fil. Wimare,
Vice comitem sicut ipse
G. dicit.

In Burn, Grime has
Hides, in which there
was 1 Plough and 2 Ser-
vants, one of those
Hides belonged to Me
forfeited to the King
since the King's coming
Grime added it to his o-
ther Land, by Rob-
ert the Son of Wimare
Sheriff. As Grime him-
self says.

Here the King's *Bayliff* had the possession of a former Proprietor's Estate, but this was so far from shewing a right of *Conquest*, that tho' the Man had forfeited, the King's *Bayliff* could not pretend to justify the Possession; but as the Land was delivered in execution by the *Sheriff*. Had the entry been in the right of War, what need of vouching this Civil Officer to warrant it?

Of this Robert and his Son Snene or Sune; I find

his memorable entry in the Hundred of Angra, Ongar
Hundred,

L. D. f.

47. 6.

Staplefort tenet Siricus
of ~~Demesne~~, Godric held
it for a Manor, and for
5 Hides, and of these 5
Hides he gave to his 10
freemen freely 4 Hides; 1
he retained in Demesne,
and after the King came
hither, Robert held 1 of
the Kings grant, and
Snene his Son joyned
the 4 Hides with that,
after the Death of his
Father.

1. Here were 5 Hides which made a M., out
of which Godric, according to his power to
make a Manner (which was frequently in the
times of the Saxons newly erected) granted 4
parts in 5 of his Demesne to hold freely, which
at least most likely to have been by Knights
service: the Lands so granted out were Outland,
in contradistinction to the Inland kept in De-
mesne.

2. Godric seems to have forfeited his Demesne,
that being come to the King; upon which he
granted it out to the great Saxon Lord, Robert
the Son of Wimare.

3. Which way soever the King came to that
Hide of Inland, this did not draw more with
than the Seigniory over the Outland; for tho'
Snene afterwards came to be owner of those 4
Hides;

Hides ; he had not them by descent from his Father, to whom W. r. had granted the Inland ; but Sene himself joyned that by his own Act ; which must have been either by *diseisin*, or by lawful purchase. The last of which is to be believed as he is agreed to be the true owner of all these Hides.

Of the Manor of Tolesberry in Turstable hundred
tis enter'd.

L. D.

Odo bohoSwani accepto
n aeras quia fuerunt de
ecclesia & bunc. hoc testa-
tur s. inde vocat Domi-
num suum ad Thoresum.

Odo homager to Swani
took to Acres which
were of the fee of the
Church, and the bunc
witnesses this. But he
calls, or vouches his
Lord to Warrant it.

Here was warranty, defences or protection, by
reason of his being Swani's Men, that is his Ho-
mager ; so Anciently Homage tho' not Assart
was held to carry warranty. This Patron or Pro-
tector whom Odo chose, was not one of the
puted Conqueror's Followers, but an old Saxon
Proprietor.

Of the like Nature is the following entry.

Ran. Piperellus calump-
niatur dim. hid. & xviii
ac. qua jacent eccles. M.
hujus & dms. ecclesie. In-
gelricus non fuit saistus
S. Comes Eustacius de-
dit cuidam Militi unde
revocat cum ad defen-
sorem & xxx ac qua red-

Ranulf Pipero! claims
half an Hide and 18 Acres,
which joyn to the
Church of the Mann
and half the Church. In-
gelric was not seiz'd, but
Earl Eustace gave it to
a certain Soldier, or one
who held by Military
service

Service; upon which account he calls on him for Defender, or vouches him to warrant it. He also claims 30 Acres, which paid 1½ pence a year to the Ancestor of Ranulf Pipewell. The Hundred witnesses it.

Here,

1. The dispute about the right to the Manner, and half the Cures, or of the Advowson, as appendant to the Manner was between old Barons, at least such as were settled here in the Saxon Times.

2. Saxon had Knights, or Tenants by Military Service under them.

3. This Service carried Homage, and required protection, or Defence in the Lord, as well as it was an obligation upon the Tenant to fight for him.

That Military Tenures were very Ancient, appears by the Custom of the famous Roman Colony, Camulodunum, Maldon, and particular Tenants there.

In Moldune tenet Rob. L. D. f.
dim. H. M. tons. Snenus
to the & Gunerius de eo. In
Mann. bac terra habet Rex iv.
reb. In Sol. de consuetudine &
z'd, but facit adjutorium cum alijs
e it to Burgensibus invenire ca-
or one bellum in exercitu & ad-
Military faciem faciend. Ceteras
dt

860 ; but the other
Customs *Suene* has there
were always a "Borow,
and a Plough, and 'tis
worth 10 s.

v. conuertaines 'babi
Suene, semper i Bor. &
i Gar. & ualec n.
sol.

*Vid. Boe-
chium, &
Burchen
contra-
sum.

Here the 10 s. it was worth, seems to be be-
yond reprimis, to the owner *Suene*, who held
of *Suene*. His Tenant *Suene* was obliged
to perform or contribute towards Military Ser-
vice, in such a manner as our *Militia* is now
composed ; but 'tis manifest, that this venerable
Borough, (which a noted Scotch Romancer affirms
to have been once in their hands) held by
Knights Service, or was bound to perform it
and *Suene*, as I take it, was *Lord* not only of *Su-*
ene, but of the whole *Borough*.

However, 'tis enough, that this old *Saxon*
had a Tenant obliged to perform *Military Ser-*
vice, along with the *Burgesses of Maldon*.

Whether *Suene* was *Lord of Maldon* or no,
'tis certain he was of the *Honour of Ragony* or
Ragbly, in the Neighbourhood ; of which Honour
'tis probable that *Maldon* held.

I find in *Rocford Hundred*,

Rageneia tenet Suenus
in dominio. In hoc M.
fecit Suenus suum castel-
lum, &c.

* Vid.

Chart. Ed.
Conf. ubi
Rob. fil.
Wimare
subscriptit
stare id.
est, ut vi-
detur He-
reporchius.

Suene holds Ragony
in Demeasn. In this
manor *Suene* built his
Castle.

This Honour, and the *Sherifwit*, if not *Earldom*
of *Essex*, was enjoyed from under an old *Saxon*
Title, till within the Reign of *H. I.* when it
came to the Crown by the Attainder of *Henry*
of *Essex*, the Son of *Suene*, who was at the
time of the Survey, Lord of the *Hundred* of

(a) *Roc-*

(a) Rockford, as belonging to his Honour of (a) L. D.
Rulifd for I find he had 185 h. of the Pleas of L. D. &
the Hundred, and as I reckoned them, he conti- 222. Had
nued all the Reign of the reputed Conqueror, Lord Rulifd
of 52 Hundreds, half Hundreds and Mannors,
in that one County of Essex, besides several Man-
ors elsewhere.

As I take it after the Attalder of Henry the
son of Swene, a Writ was directed to (b) Alberic (c) Bp.
of Aubrey de Vere, to cause the County of Essex, Col. Certi-
fie fit upon the Land of one Alesan then in dis- West. sub-
due. Whether this was to him as Sheriff, or Es. Pauline
Earl, or rather as Chief Justice, I need not here enq. f. 63.
enquire.

To proceed, of Lacheſtedam in the Hundred of Hund. de
Dennm. f.
umnow, 'tis enter'd. 38 6.

Lacheſtedam tenuit
Iſmarus, T. R. E. &
4. Valet L. lib. ut di-
nit Franci & Angli.
De hac terra tenuit i.
c. T. R. E. vii. ac 3
mid. que sunt addite
ic M. T. R. W. & non
diderunt consuetudi-
m Regis.

Wifemar held Lacheſ-
tedam in the time of
King Edward, now 'tis
worth 50 l. as the French
and English say.

Of this Land i Sol-
man in the time of King
Edward held 7 Acres
and $\frac{1}{2}$, which were ad-
ded to this Mannor in
the time of King W.
and yielded not the
Kings Custom.

Not to enquire whether the Kings Custom was
service in the War, or any other Duty, or Pre-
station, 'tis observable.

i. That Land, which in the time of the Con-
queror, seemed to hold immedately of the Crown,
least was within no Manor; as it is to be
assumed on the free choice of the owner, for

the Duke of protection, was then lately brought to be within that Manor.

Which is more considerable, and demonstration against one of Dr Brady's wild assertions, that for above 100 years after the first 5 years of W. I. all the Hundredors were Normans; these Hundredors who certify the value, were a Jury, or rather Members of the Hundred Court, made up of French and English.

Hinchor Hundred.

*Roinges tenuit Colemannus. T. R. E. pro iii.
virg. M. Ric. pro tantum-
dem in Dominio; et iste fuit
ita liber quod possetire
quo velle cum Soca &
Sacna. S. tamen fuit
homo Wifgaris Antecessor
Ric.*

Coleman held Roingu in the time of King Edward for 3 yard Land. Now Richard holds it in Demeain for the same number; and he was so free, that he could go whither he would within the Soc. and Sac. but yet he was Homager to Wifgar, Richard's Ancestor.

Tho I will agree, that by Antecessor, sometimes no more is meant, than the owner of the Manor, before the then Lord; there's no reason here to make any difference, since the right of the last Lord, is founded in the right of him that went before. But where the former Lord was a Saxon, as Wifgar was, the word is more properly rendred as I here use it.

The Soc and Sac, as the Confessor's Law shew, was jurisdiction in Civil Actions, the 1st of which relates to real, and mixed with the realty; the other to Personal, and imply a Court Baron.

So that Wifgar's Homager had a Court Baron of his own, while he was Homager to Wifgar.

he had Liberty put his Manor under the Lord of another fee,

This Man held by Knight's Service, as appears not only by his being an *Homager*, but as his Manor was rated to the Hidage but as 3 *yard Lands*.

To consider a Entries together, under the Land of *Geisfrid de Magnavilla* in *Lindun Hundred*.

Teliam tenet G. in Dominio quod tenuit Alurius, T. R. E. &c. Ibi fuerant iii. lib. homines tenentes ac. S. non fuerunt de illo Man. quod G. habet S. ipse revocas liberatorem. In Ongar Hundred. Senlisiam tenet Rainoldus de G. q. tenuit Lovedai pro M. & 30. ac non fuit de feudo Ansgari sed tantum fuit homo suus.

*Geisfrid holds Telia in Deneasn, which Ale-
rit held in the time of King Edw. There were
3 Freeman holding 40 ac. But they were not
of that Manor, which G. has, but he vouches
the Person, who deli-
vered them. In Ongar
Hundred. Rainold holds
Senlis of G. which Less-
day held for a Master
and 80 Ac. and he was
not of Ansgar's Fief,
but was only his man.*

It may be observed upon these.

1. That *Geisfrid de Magnavilla* claimed the Services of these men by purchase, and vouches the party to warrant, who made them over.

2. That the word *Fend* or *Fee* was not used in relation to a new acquisition, since the coming in of W. i. but this was the *Fend* of *Ansgar* an old *Saxon*.

3. The whole Hundred of *Ongar* called *An-*
gra, had manifestly been his *Fee*, and had its
name from him. *Lovedai* or *Lovedai*, a name

known in that Country, tho' he was not then within Ansgar's Fee, yet was his *Homager*.

That the owner of this *Fond* was an old Saxon appears by the following Entry.

*Legram tenuit Ansga-
rus, de R. E. &c. Istud
quoq; M. dedit Esgarus
Haroldo & Harolamus iste-
rum dedit eidam suo
Huscarlo non sine Scalpino
& iste Scalpinus dedit
ux. sua in dote viden-
tibus duobus hominibus
scil. Rogero Marescallo
& quodam Anglo, &
hoc testatur Hundm. quod
audierunt recognoscere
Scalpino & postquam R.
venit in hanc ter. tenuit
ipse donac iuris ubi mortu-
us fuit in Ebroica in ut-
legaria.*

Here *Ansgar* and *Esgar* seem but different readings of the same Name, and tho' a certain Englishman is mentioned, as if Marshal were a Frenchman; 'tis plainly no otherwise than as the name of the Englishman was not known, but distinguished from the French, who joyned with the English in the Hundred Court.

But to wave this for greater matter,

1. Here was plainly *Dower* at the Church-door, and this right was allowed to continue the Woman's interest, notwithstanding the Forfeiture of this Man, who was one of them that held out York against W. I. the Siege of which all Histrians of the time mention.

2. The

Rebe
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coffor
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is Ten
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G. derat
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tenus d

This
in Chig

2. Till Scalpin was Outlaw'd for High Treason in Rebelling against the King, before that time actually Crowned; he was allowed to have a good Title, and to have been rightfully possessed of this Manner.

3. This Scalpin, who continued in quiet possession till that Forfeiture, was an Huscarle to the Usurper Harold; that is, as it were easly shewn one that owed him Military Service; but yet, as appears, had not assisted him against King Wm.

L. D. F.
60. 6.

In Laxenduna tenuit in Laxendune Luttinus Colun 40 ac. M. tenet & ibi est in hac terra Ante-cessor ejus habuit nullam consuetudinem nisi com-mendationem.

This was one of the *Colns*, where either 40 Acres of Land were held by *Homage* only, or which is more probable, the *Manor* was rated but at 40 Acres, and all who held of it were *Homagors*, that is Tenants by *Military Service*.

Of the Manner of *Berneftuna*, and 2 others 'tis Enter'd.

Hec 3 M. praecepit R. per Rob. de Oileio ut Hugo teneret de Goisfrido de magnavilla si ipse posset ea deracionari ad suum feudium & antequam G. deracionavit ea pertinere suo Feudo, Hugo ea tenuit de Goisfrido.

These Mannors the King by Rob. d'Oyl required that Hugh should mow, for hold of Goisfrid de Mag- navill ; if he could de- raign them to his Fee, or Feudland before G. de raign'd them to appertain to his Feud, Hugh held them of Goisfrid.

This great Lord appears to have been a Tenant in Chief, holding an Ancient Barony in than Coun-

County, which coming to the Crown, was granted to him. The Lord of those 3 Mannors would not own that they were part of that Feud, or within the Barony; and therefore Goffrid took out a Writ to have the matter tryed. It seems Hugh being conscious that they were within that Barony, would not stand Tryal; but freely came and did Homage or Swore Fealty, whereby he acknowledged himself to hold of Goffrid; which, as appears, that powerful Lord drove him to no otherwise, than by applying for a legal method to have the right determined.

I find another Entry to the like purpose, concerning this Baron.

L. D. f.
62.

In Muneball tenet qui-dam Anglicus de G. 3 virg. quas tenuit liber homo T. R. E. & T. R. W. effectus est homo G. sponte sua & dicunt homines Goffr. quod postea Rex concessit G. pro escangio sed neque ipse homo nec hundred re-stimonium G. perhibent.

In Muneball a certain Englishman holds 3 yardLands, which a free man held in the time of King Edward; he became Goffrid's man of his own accord, and Goffrid's men say, that afterwards the King granted him to Goffrid in exchange; but neither the Man nor the Hundred bear Testimony for Goffrid.

Here this Englishman, who derived under a Freeholder of the time of the Confessor, had of his own accord, put himself under the protection of Goffrid, for which he did him Homage. This did not satisfy Goffrid, but tho he was not within his Feud or Barony, he would have it, that he had been a Tenant of one of the King's Mannors, and was added to Goffrid's Barony in exchange for one he had given the King.

But
but the
still wa
In P
Fairf
roldus
marus T
15 ac. i
E. dequ
saifivit
dum G.

This
Saxon, i
who he
appears
go wh
fore S
Magnar
within
Wm
which
try con
the Son
Map
mundus
i Molqu
de Gar
nio.

This
a right
ent by
cor.
Unde
find.

But this claim is opposed not only by the Man, but the whole *Hundred*, who adjudge, that he still was no more than an *Homager* to *Gosfrid*.

L. D. f.

73. 6.

In *Piperels Barony* I find,

Fairstedam tenet Tu-
roldus quod tenuit Bric-
marus T. R. E. &c. Et.
15 ac. ibi jacebant T. R.
E. de quibus Saiswallus de-
saisivit & jacent ad feu-
dum G. de Magnavilla.

Turold holds Fairsted,
which Bricmar held in
King Edward's time.
And there lay 15 Acres
in King Edward's time,
of which Saiswall dis-
seised, and they lie to
the Feud of Gosfrid de
Magnavill.

This *Turold* or *Thorold*, who was an *Ancient Saxon*, is adjudged at least to be the Lord of him, who held those 15 Acres, the owner of which appears not to have been so free, that he could go whither he would with his Land; and therefore *Saiswall*, who was certainly *Bayliff* to *G. de Magnavill*, was held to have brought that Land within *Gosfrid's Barony* by *Disselis*.

Wm de Waren is taken to be a *Norman Baron*, which tho I much doubt, I may observe this Entry concerning him, within the *Barony of John* the *Son of Waleram*, who was an old *Saxon*.

Maplestedam tenet Os-
mundus de John & tunc
t Molquam modo tenet W.
de Garend pro vadimo-
nio.

Osmund holds Maple-
sted of John, and then
there was one Mill,
which Wm de Garend,
or Waren, holds in Mort-
gage.

This *Wm de Garend* held not absolutely, but a right of redemption upon paying the Money sent by *Garend*, remained to the *Saxon Proprie-*
tor.

Under the Land of *Tibell Brito* or the *Briton* I find.

Ger-

L. D. f. Gerdelas tenuerunt i i
 ¶ 1. 6. lib, hoes T. R. E. pro
 Mauerio hoc tenet Serlade
 Tibello banc ter. reclamat
 Tibellus de dono Regis.

Two Freemen held
 Gerdelai, T. R. E. for
 Manner. This Serle holds
 of Tibell, this Land Ti-
 bel claims of the King
 grant.

Serle an old Saxon, whose Family continues to
 this day in Essex, held the Manner within Tibel
 Barony. Tibell, indeed claimed the property of
 the Land, as part of his Demesne within the King
 original grant to him, or rather his Investiture
 by Livery. Notwithstanding which claim, Serle
 continued to hold freely of him; and seems to
 have been no more than an Homager.

T'were endless to cite all the confirmations of
 what I have affirmed, in relation to Tenures in
 the Saxon Times; without any alteration of them
 in the time of W. I. or of any part of that Law,
 by which Lands had been enjoy'd before his com-
 ing: I shall conclude my instances of this
 kind in that County, which I know not how to
 forget, with one concerning my own name, the
 I am well assured, my first Ancestor there came
 from Ash in Kent.

Of the Manner of Gingam 'tis Entred.

¶ 72. In eadame tenet Will.
 de Bosco & Hidas & 26
 Acres & babes in suo ex-
 change quod ten. Alfigo
 & Algarus T. R. E.

In the same, Wm of
 the Wood or Atwood
 holds 2 Hides and 26
 Acres, and has them in
 his exchange. Which
 Alfigo and Algar held in
 King Edward's time.

As he had this in exchange, 'tis evident he ow'd
 it not to the gift of a Conqueror.

The County of Norfolk being so near Essex, it
 may not be time lost to observe the uniformity

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of Entries concerning that County, and a further confirmation of the Sence I have put upon some Entries, which might seem of a doubtful interpretation.

It being observed in the Survey, that there were 320 Burgesses in the City of Norwich in the Con-
sessor's time, 'tis entred concerning but one of that number.

*Erat ita dominicus Re-
gis, ut non posset recedere,
ne homagium facere, sine
licentia Regis cui erat no-
men Edfan.*

He was so of the L.D. & Kings Demeain, or at 116. tach'd to it, that he could not withdraw himself, or do Homage, without the Kings Licence, whose name was Edfan.

Of part of that City 'tis Entered.

*Hoc tenet R. Bigot de do-
no Regis & de meenurwilli
habebant Ran & Comes
Socam & Sacam & Com-
mendationem & super 32
habebat Haroldus Socam
& Sacam & Commenda-
tionem quorum unus erat
ita dominius, ut non pos-
set recedere, nec homagium
facere, sine licentia ipsius.*

This Roger Bigot holds, and of 1138, the King and the Earl have the Soc. and Sac. and commendation or Homage, And over 32. Harold had Soc. and Sac. and Commendation, of which one was so of his De- meain, that he could not withdraw himself, nor do Homage, without his Licence.

So of the Borough of Thetford or Thetford.

*In Burgo erant 958
Burgenses T. R. E. De-
bis habet Romnum consu-
tudinem; de istis homini-
bus erant 36 ita Domi-*

In the Borough there L. D. 118. were 958 Burgesses in the time of King Edward. Of these the King has all custom; of those Men

Men 36 were so of the Kings Demesne, that they couldnot become Men, or do Homage to any Body, without the Kings Licence.

nisi Regis ut non possent esse homines cuiuslibet sine licentia Regis.

Vid. Ho-
veden, f.
261.
Malmes-
bury, 6.

L. D. f.
128. 6.
Comes
Rad virtus
T. R. E.

In this County a Saxon Earl with a British Mother, Ralph Guader, had Homagers under him till he forfeited, and a Fee or Feud, of which Stou was the head; and his great Estate there he had by inheritance from his Father, call'd the Earl Ralph,

In Brecreles 25 ac. semper dim. car. v. sue. In Sabam & prepositus de Sabham vendidit T. R. E. per unum Frennum Endoni homini Comitis Radulfi & jacuer. in elinegham ad firmam Radulfi & tenebat eos die qua foris fecit, &c.

In Brecreles 25 Acre always half a Plough 5 Socmen in Sabham and the Bayliff of Sabben sold it in the time of K. Wm by one Frene to Endo Earl Ralph's Homager, and they lay at Elnegham within Ralph Farm, and he held them the day that he forfeited.

Vid.
Domest-day
f. 194.

Then mentioning Brecreles.

Godricus eam revocat ad feudum Comitis Radulfi in Stou, dicens quod ipse eam tenuerat duob. annis antequam foris faceret & duobus annis postea: ex hoc offert quidam famulus Regis De Stou portare iudicium.

This Godric, who had been Earl Ralphs Bayliff, was afterwards the King's for that Fee,

Godric calls this back to Earl Ralph's Fee in Stou; saying that he had held it 2 years before Ralph forfeited and 2 years after, of this one of the King's Servants of Stou offered to bear Witness.

Hos
got ex d
de feudo
Antecep-

the nameless Person was for *Sabbam*; who, it seems, pretended to sell Forfeited Land, which was not within His Commission, it not extending to *Stou*.

Frene was plainly the Attorney, who executed the Sale by *Livery*; but it seems in Law, it continued part of the *Fee* in *Stou*, and ought to be under the management of *Godric the Kings Bay*-*iff* there. But the King made no pretence to it, till *Earl Ralph* had forfeited, which was not till the 10th or 11th of that Kings Reign, when *Ralph* was held to have Conspired with *Earl Wulfhaf* to dethrone *W. I.*

Another Earl who joyned with them, was Ord. *Vlt.* *Roger of Bristol* Earl of *Hereford*, *Ralph's Uncle* by f. 530. An. the Mothers side. He confessing his Crime, R. de Bril. was adjudged to forfeit his Estate, and to be Im-^{1703.} prison'd during Life; upon which 'tis remarkable that in *Andover Hundred* 'tis entred.

Rex tenet in dominio Cladford de feudo Comitis Rogerii. The King holds in Demeain *Cladford* of the *Fee* of *Earl Roger*.

This was by the Forfeiture of his *Fee* or *Barony* there. This *Roger* sometimes had the addition of *de Britollo* or *Bristol*, sometimes was called *Radin*, and was the Son of *Wm Fitz Osbern* settled here in the *Confessor's time*. Mentioning 6 *Freemen*, under *Stanart*, who had been under *Kingulf T. R. E.*

Hos reclamat R. Bigot ex dono Regis & sunt de feudo Alui de Tetford Antecessoris sui.

This *Roger Bigot* re-claims, or calls back to him, of the *Kings gift*, ahd they belong to the *Fee* of his Ancestor *Alui of Tesford*.

This

This Roger Bigot was Lord of the City of Norwich, and Ancestor of the first Earl of Norfolk, after the time of Wⁱ. Some may suppose that Bigot had these of the Kings gift to him, as the King gave him Alui's Fend, and that Alui was only his predecessor in that Fend. But this is soon after determined to a different Sense, where, after the mention of those Freemen and others, 'tis added.

*Hos liberos dedit R.
Aluio de Tetfordocum ter-
ris suis, sicut R. Bigot re-
clamat.*

These Freemen the King gave to Alui of Tetford, with his Lands as Roger Bigot reclaims them.

It may seem that Alui had these and his whole Fee, purely from the concession of a Conqueror, whereas it was plainly upon *Livery* to his Tenant in Chief at his coming out of *Wardship*: and thus the Land was his own before, tho' he was not truly seized, till *Investiture*, according to the old *Feudal Law*; imitated, as I may afterwards shew, in Foreign parts. Whatever Bigot had, as succeeding to his Ancestor Alui, the Earldom of Norfolk with the City of Norwich, annexed in Tenure to the Earldom, he had of the Kings Grant, after the attainer of the younger Earl Ralph Guader, who maintained his Authority so absolutely till he Forfeited it, that the *Normans* could get but very little footing there, and that only from the concession of him or his Father.

After mention of 36 *Frenchmen*, who seem to have been in a part of Norwich called the new *Borough* in the Confessors time, and at the time of the Survey were encreased to but 41, a third part of whose Forfeitures went to the Earl, 'tis added,

Tota hæc terra Burgen-
ium erat in Dominio Co-
mitis Radulfi, & concessit
eum Regi in commune ad
faciendum Burgum inter se
& Regem ut restatur vi-
ce comes & omnis terra
ita tam militum quam
Burgenium red. Regi
nam consuetud. est etiam
in novo Burgo quadam
ecclesia quam fecit Rad.
comes: eam dedit suis Ca-
ellarie M. eam tenet sa-
cerdos Vice Comitis ex do-
no Regis nomine Wala.

All this Land of the
Burghes was in Earl
Ralph's Domains, and
he granted it to the
King in common, to
make a Borough be-
tween him, and the
King as the Sheriff
Witnesses. And all that
Land, as well of Ten-
ants by Military Ser-
vice, as of the Burgh-
ers, yields the King his
custome. There is also
in the new Borough a
Church, which Earl
Ralph built that, Earl
Ralph gave his Chap-
lains. Now Wall the
Sheriff's Chaplain holds
it of the Kings gift.

As the Earl's Chaplains were Saxons; so plainly
was Wall the Sheriff's Chaplain; and no wonder,
that the Frenchmen there were under a necessity
of Learning the Saxon Tongue; since, notwithstanding
the vulgar error of Moderns, as if the gulf.
Leadings in that time were in French, I could
new, that they were in the Saxon Tongue, and
or that very reason W. set himself with the
greater industry to be master of that Language.

Tho there are numbers of other tempting in-
stances to my purpose in that County Cynthius,
pellit & admonuit aurum.

That my Learned Friend Mr Leneve, to the ge-
nerous liberty given by whom, and Mr Love
owe this and further light, is upon a full history of Norfolk, and I ought not to anticipate more

Deputy re-

mem-

brance.

more of those discoveries, with which he is upon obliging the World.

Yet I cannot forbear adding one more pregnant Entry, after mention of a certain *Freeman* or *Freeholder* in *Pinkenham*, 'tis added.

Tenet idem 30 ac ter.
& postquam R. venit in istam patriam ten. istam ter.
Comezo R. Senior homo Wibenoc amavit quandam Feminam in illa terra & duxit eam, & postea tenuit ille istam terram ad feudum Wibenoc sine dono Regis, & sine liberations & successoribus suis, &c.

The same man held 30 Acres, and after that the King came into the Country, Earl Ralph the elder held that Land. An Homager to Wibenoc lov'd a certain Woman in that Land and married her, and held that Land to the Fee of Wibenoc without the King's Grant, and without Livery, and to his Successors.

Here 'tis observable,

1. That this Land, tho' it was at first held of Earl Ralph, was separable from his Feud; the owner being so free, that he could go with his Land whither he would.

2. That the Woman was Heiress of that Estate by Marrying whom Wibenoc's Homager was feiz'd to him and his Successors; those who should succeed upon that Marriage by inheritance from the Wife.

'Tis plain he had issue by her, and she being dead, he was Tenant by the *Courtesy of England* and therefore, besides that he was no Tenant in Chief, he but continued the possession which he had in the right of his Wife. Therefore he had no need of Livery; which, as it was an *Invention* of the Fee, where needful, was properly

Grant

Grant ; in which Sense, as I shall shew, our Kings have granted the Kingdom of Scotland to Scotch King.

As I have shewn Homage here, so much earlier then Sir T. C. will allow ; that Homage for the Kingdom of Scotland was due to the Crown of England, their two great Advocates Sir T. C. and Bishop Lesly, prove sufficiently to remove all prejudice against my re-asserting this Honour of Subjection as the right of my Countrymen beyond the Tweed.

C H A P. VI.

Of the Testimonies of Sir T. Craig and Bishop Lesly of the Scotch Homage, and the consequence of it.

May be thought a very confident undertaker to pretend to bring Sir T. C. and Bishop Lesly on my side in this Controversy ; but if I do, I hope I may the more easily perswade my Countrymen of Scotland, to submit to the prevailing force of Truth and Right, which with honest minded Men, is a more effectual Ballance of Power than property. Sir T. C. who would have been very angry, if their Traditions were not treated with some respect ; says, ' most of that we find in the English History before the Conquest is vain and trifling, and almost all of it uncertain, except what is writ by the Roman Historians, and Gildas or Bede. This is the 3d proposition, upon which he uses his Talent of enlarging ; and a 4th ^{Sir T. C. p. 34.} making that for granted, goes further to expose

this Evidence, 1. As Monkish. 2. As Domestic.
3. From Enemies; but he is not aware that he receives an Authority which sets up all that he would overthrow.

Our faithful Historian Hollinshead, whom Sir Thomas charges with many Forgeries of his own, having in the course of History mentioned the Glorious Reign of our King Canute the Dane, that he was King of 4 Kingdoms, of which Scotland was one, and that he had subdued that Nation, which was not willing to receive him as Monarch of the Island; Sir Thomas says,

' I shall exhibit here one testimony of King Edward who succeeded Canute, which will overturn all those Calumnies.

Sir T. C.
p. 235.

' For when it was debated in the Public Meeting of the States of Parliament, who ought to be accounted as Denizens of England, and enjoy the same privileges with them; those of Britain in France were nam'd first, because they were originally from England; Edward added the Welch next, because King Inas married a Wife out of Wales; and at that time there was a general intermarriage between the Welch and the English. The Scots were mentioned in the third place, who almost all of them, especially the Nobility, had Married with the English, and so at that time two became one Flesh thro' Britain; by which all became one Nation and one People thro' the whole Island. All those above mentioned (says he) did ever stand stoutly one Man for the common utility of the Crown and Kingdom, against the Danes and Norwegians, fought most gallantly and unanimously against the Common Enemy, and bore the burden of most fierce Wars in the Kingdom.

' This

' This, says Sir Thomas, I have transcribed
' *verbatim*, lest any one should accuse me of ad-
' ding somewhat of my own.

In which it appears, that he need not have sought for proof of his Sincerity ; yet if it had been entire, he would have added more out of that Law, of which afterwards.

He proceeds,

' This Law of Edward, Wm. the Conqueror con-
firm'd in the Public Meeting of the States, as Vid. Inf.
they are translated from the Saxon Tongue Sir T. C.
by Wm. Lambard in the Edition Printed at Lon-
don by John Day in 1568, and indeed there are
many things in this Law worthy the taking
notice of.

1. The first thing to be weighed is the Title; which is concerning those who may, and ought of right to cohabit and remain in the Kingdom of Britain.

' 'Tis expressly provided, that the Scots may and ought of right to cohabit and remain in the Kingdom of Britain or England, and be accounted Denizens, and enjoy the Priviledges of the Kingdom.

' There's a two-fold reason given in the Text, why they ought to be reckon'd among the Denizens of England.

1. Because the Nobility of Scotland, and almost all the People in general, had Married with the English, as many of the English had Married with the Scots, and therefore the Scots being descended of English Blood, they were of right to be accounted English.

2. Because all the People above mentioned did ever stand stoutly as one Man, for the common hu-
manity of the Crown and Kingdom, against the

Danes and Norwegians, and fought it most valiantly and unanimously against the common Enemy, and bore the burden of most fierce Wars in the Kingdom. The doubling of the Adverb *Semper* deserves to be taken notice of, and that they waged most most fierce Wars together for the profit of the Kingdom of England.

3. Moreover, says Sir Thomas, the time when they became one People, and did unanimously sustain the impression of the common Enemies, is dated from the Reign of *Inar*, King of the English or *Saxons*, who came to the Crown in 689, and continued till his time, meaning the Confessor's.

An. 689.

* *No here
he contra-
dicts him-
self having
allowed
Gildas,
Bede and
Ethel-
ward.*

This one testimony, says he, of *King Edward*, I oppose to those of all the English Historians, who write that the King of *Scots* did so often Rebel, and conspire against the English with the *Danes* and *Norwegians*, was so often Conquer'd, Surrender'd and Forced to become a Supplicant; for this *Edward* was elder than any Historian now extant in England. Nor have they any Historian from the Death of *Beda* to this *Edward* before the Conquest, who will be a prudent Man, and a very substantial evidence of the things that were done before. Moreover this Law was approved by the States of England who, its reasonable to suppose, understood more of the Transactions which hapned before their time, than any Monk of the following Ages; and therefore, by the Testimonies of *King Edward*, that of the States of England, and the Conqueror himself; the *Scots* during the time of the *Saxon Monarchy* were their fellow Soldiers and faithful Companions, had the same Friends and Enemies in common, and fought manfully

for their safety against the *Danes* and *Norwegians*; and did thereby deserve to enjoy the same privileges with the *English*. These things, says he, I have insisted upon to refute their *Calmies*, who alledge that the King of *Scots* ought to be excluded from the Succession to the Crown of *England* as a *Foreigner*.

And this long passage I have transcribed, that it may appear from such Ancient Testimony receiv'd by Sir *Thomas* himself, that the Successors to the *Crown of England* will, by the very Succession to this *Crown*, be entitled to the Allegiance of the *Scots*, as born Denizens or Natural Subjects of the Kingdoms of *England* or *Britain*.

This is evident from the Authority so greedily catch'd at by Sir *Thomas* for the point of the Succession, that he overlooked the apparent proof of not only *Homage* but *Allegiance*, which is of further Importance.

To manifest that it was unluckily produced to contradict our Historian,

I must observe,

1. That their being *Fellow Soldiers* and faithful Companions, infers their being *Sworn Brethren* with the rest of the Subjects of the Crown of *England*, which plainly appears from what he has cited, but will be undeniable, when we come to vid. infra observe what he has conceal'd.

2. The *Sempur*, which he relies on, does no more infer, that tho' the *English* and *Scots* joyn'd to repel invaders, they never quarrell'd among themselves; than it implies, that none of the *English* were guilty of Rebellion, or joyning with invaders; but this related to the joyn't obligation always to resist invaders, tho' they did not always discharge their Duties.

3. The joyning together in opposing the *Danes* and *Norweigians*, is no argument against what our Historians say of the *Scots* being Conquer'd by *Canute the Dane*, after he was Crowned King of *England*; and the rather, because as it may be seen in the *Historian Knighton*, *Canute* came in, and made his claim upon an old *Saxon Title*.

P. 3. 3.
Sir T. C.
p. 149.

4. 'Tis wonderful, that Sir *Theo.* could not discern his contradicting what he had asserted, as an evidence, that there could be no *Homage* paid for the Kingdom of *Scotland* to that of *England*, from the coming of *Hengist* in the year of Christ 446 or 459, until King *Egbert's* Reign under whom the 7 *Kingdoms* were united, which is not supposed to have been before the year 830. When he owns, that the whole *Mund* made but one *Kingdom* from King *Ina's* time, which was above 140 years before,

The in one sense *England*, *Scotland* and *Wales* were but one *Kingdom*, as they had but one *Imperial Crown*; This does not imply, that there was but one *King* even in *England*: that there were more than one in King *Ina's* time, and since, Edward the Confessor and his Great Council or Parliament equal not but know; yet as they assert it to have been an entire *Monarchy* from *Ina's* time; 'tis certain so it was, that the *Primacy* was desultory sometimes with one division of the *Saxons*, sometimes with another, till it rested with the *West Saxons*.

5. K. *Edward* and his *Parliament*, and *W.* with his, held *England* to be the *Seat of Power* and that its Kings were from *Ina's* time *Monarchs* of all *Britain*: and by consequence, that if there were such a thing as *Homage* in those

Times, all other Kings within the *Island* were Vid. Inf Liege Homagers to that Monarch, is very evident from this quotation ; which shews, that all upon the *Island* were one Nation, united for the common utility of one Crown and Kingdom, and that was the Crown and Kingdom of England. This is the Confessors Law, is express, and Sir Tho. Craig admits, was the Crown and Kingdom of Britain ; which, as every Man knows, takes in the whole Island.

And it may well be ask'd whether at that time it was thought, that there was more than one Kingdom of Britain, whatever Kingdoms might have been within it ?

Thus has Sir Thomas Craig unwarilly mentioned one great, and undeniable evidence of the Superiority of the Crown of England, without putting us to have recourse to Monks, and those Sir T. C. supposes of no earlier times than the reign of H. 1.

It may not be improper to add, what their Bishop *Ley* says upon the very point of Succession, with which Sir Thomas closes this Quotation.

It having been objected against the claim of the Queen of Scots and her Son, to succeed to the Crown of England, that by the Common Law of England, Foreigners cannot inherit in England ; and that the exception of the Kings Children in the Stat. of E. 3. concerning Persons born under a Foreign Allegiance, cannot extend to the Grandchild of a Daughter extra familiaris ; that the Queen of Scotland, says he, was born in Scotland we must needs yield. But that Scotland is under the Dominion of England, altho our most Serene Queen, and all her Subjects of Scotland are of right denying ; yet very many of England, both p. 21.

both of the Learned and of the Vulgar constanly assert and affirm; being induced and per-
suaded to this chiefly by various Histories, and also by Registers, Records or Written Memo-
rials, and Instruments of Homage, as they call them, which they say are extant in Archives
of that Kingdom; in which, they say, there's men-
tion that the King of Scotland acknowledged
the King of England for Superior Lord of the King-
dom of Scotland, and did Homage to him: which
if it be true (altho the Scots as I said, denying
it, who truly assert that Homage which they
call Fealty, was exhibited only for certain Land
and Territories, in the Northern part of England
viz. Northumberland, Cumberland, Huntingdon
and other Counties of the Kingdom of England
bordering upon the Kingdom of Scotland, which
are not now under the Government of the Scotts
tis wholly necessary by the Common Law of England
that the Kingdom of Scotland ought to be account-
ed taken to be within the Dominion of England.

1. Here the wary Bishop, who was conversant with our Learned Men in Queen Elizabeth's time, owns, that the English cited not only Historians but Registers, Records and even Instruments of Homage for the Kingdom of Scotland; and if he had not found, or been satisfied that there were such, we should have heard of it from him, to justify his denying it; tho he uses the supposition as an argument *ad hominem*.

2. He takes it for an undeniable consequence, that if Homage was due for the Kingdom Scotland is within the Dominion of England: this he urged only for his purpose, to prove their Queen no Foreigner; but it as plainly serves in the present question, whether since the Crown of Scot-

Scotland is devolved upon the Possessor of the Crown of England, it can rightfully be separated from this Crown, without the consent of that Person or Body, which can dispose of the Crown of England, or its chief Rights. That it cannot be otherwise separated will follow, even from Sir Thomas Craig's argument against the continuance of the Superiority of the part now call'd England over Scotland; from the supposed division among the 3 Sons of Brutus, Loerinus, Camber, and Albanactus; ^{I Sir T. C.} The onlything, says he, I wonder at is, how this Superiority came to be ^{p. 71.} continued to these Times; for if Loerinus had ^{Vid. Inf.} the superiority of Albany, and succeeded to Albany, it necessarily follows, that the Liege Fee was extinguished with Albany, and that Albany returned to the Superior Lord, per consolidationis *utatis dominij cum directio*, as is usual in Vassalages, where the Lord of the Dominant Estate succeeds to the Lord of the Subordinate.

Sir Thomas would argue from the Nature of Homage, as implying a benefit receiv'd, and the Divisions in England in the British times and since, that it is not likely the Scots should do Homage to ^{Sir T. C.} the Crown of England, as receiving any part of ^{p. 59. 61.} Scotland, as a Benefit or Gift from the Crown of ^{*l' the King-*} England; but soon admits that protection might have been a ground of Homage, and this any Man ^{dom of} may see to have been so in our Feudal Law, who ^{part} observes the Homage, which men of another ^{of the Pa-} Fend paid a Superior Lord, as commendati, or under ^{trimony, or} his Protection.

That upon this account the Scots might have been Homagers, and that without any supposition that their Kings went further in the giving it, than the Constitution of the Kingdom would <sup>that which is now cal-
led the Kingdom of</sup> England, War- &c.

p. 149.

Warrant , and that this might have been translated from the British Monarchy to the Saxon , by the free consent of the People of Scotland , I desire Sir Thomas Craig's own Testimony to be compar'd with the Authority of that part of the Confessor's law received by him as above . ' While says he , the British Monarchy was still in being the Saxons raged against one another with mutual slaughters , until the rest of the Saxons being Conquered , the King of the West Saxons obtained the Sovereignty of all England , except Wales , which hapned about the year A.D. 833. and therefore it is not likely , that they were intent upon the swallowing up of other Kingdoms during that time . And before that the Danes did exercise Piracy upon the Maritime Countries , and being invited by the fruitfulness of the Island and other things ; and following the same methods that the Saxons had done before them , they conceived hopes of seizing the Kingdom ; and therefore , the English , tho' they did willingly unite in one Kingdom , they did also desire the conjunction of the Scots , that they might be the more able to resist the common Enemy .

' The Scots did readily consent , and especially for two Reasons .

' 1. Because the English had a little before embraced the Christian Religion , to which the Danes were capital Enemies .

' 2. Because they had experienced the Valour of the Danes , when they slew Constantine the King of the Scots and his Army , and perceiving that they should be liable to the same danger , they did willingly associate their Arms with the English ; and Alfred himself , being assisted by the Scots Auxiliaries , did break the strength of the Danes .

Upon

Upon which, 'tis observable.

1. That he owns the *Seas* to have Voluntarily joyned with the *English* in one *Kingdom*; and if this is not plain upon his confession here, it comes from his Quotation of the Confessor's Law.

2. He is confus'd as to the time of its beginning, and gives Reasons, which seem of different Ages; that of the same Religion and mutual Danger from the *Danes*; which name has been applied to all the Northern Pyrates, tho' before the settling of the *Saxons* here, they were called *Saxons*, began very early in the *British* times; but the overthrow of their King *Constantine* was in our *Abelstan's* time, unless it were one of the fabulous Kings, yet he admits it to have been thus in our King *Alfred's* time.

3. That there was an head of this Union in all these times, is but a necessary consequence, and all our Historians and Records shew, that there was a *Rex Primus* of all *Britain*, the whole *Island*, before the supposed first *Monarchy* of *Egbert*; The authority of the Confessor's Law, that it was in *Inae's* time, and that the whole *Island* continued one *Monarchy* to the Confessor's time, is not to be denied.

I suppose it will not be pretended, that *Scotland* was ever the head of this Union; or that they were ever able to scour the *Seas*, to secure themselves from the invasions of the Pyrates.

While the old *Romans* exercised Authority within this *Island*, they seem'd possessed of all the Naval Force, by which they maintained a Superiority, and they had a *Comes Litoris Saxonici*, an Earl of the *Saxon Shoar*, or Protector of the Shoar from Pyrates, of the Nature of our *Lord High Admiral*; this was throughout *Britain*, whether the

English or the *Scots* have had most right to have such an Officer from among them, is easy to determine. Thus it may be evident to any Man from what Sir Thomas Craig has produced and admitted ; that the *Scots* have without any dishonour to them, acknowledged the head of the Monarchy to be in *England*. The grounds for which have been very laudable.

1. For the sake of Religion.
 2. For the defence of the *Island* against barbarous *Invaders*.
-

C H A P. VII.

Sir Thomas Craig's *Notions of the British Times* examined : In a short consideration of the question who were the first Inhabitants of this Island, and how and when the *Picts* and *Scots* settled here. Sir George Mackenzie's *Whim*, as if the Land of the *Scots* in Britain, was Anciently called *Ireland*.

What has been already observ'd, may prepare the way for Men's listening to particular proofs of what Sir Thomas has more than pointed at, and made more easy to follow up to the British times.

Sir Thomas, it seems with the approbation of our Learned Bishop, says,

' Long before the name of *England* was known,
' we had many Kings in *Scotland* ; nay, some of
' them possessed *Britain* itself.'

Hence he would seem to argue as if *Scotland* ought more properly to be accounted the head of the Monarchy than *England*. He adds,

to what concerns the Kingdom of the *Picts*, it cannot be called their *Benefit*, for that we acquired by our own proper valour against their will, they having taken Arms in defence of the *Picts*.

Which is a piece of History invented to serve is Hypothesis ; for it cannot be shewn, that any Britons, but such as were under the Dominion of the *Picts*, took Arms in defence of them ; but the truth is, that the *Britons* in that part, which is now call'd *England*, assisted the *Caledonian Britons* against both *Picts* and *Scots* afterwards from *Ireland*. Over the *Caledonian* and other Northern parts of *Britain*, it seems he will suppose the *Scots* had a right of Conquest ; and yet will not allow that Conquest could restore the *Britons* to their right of immediate Subjection to the Imperial Crown of the *Island*.

It hardly could be thought, Sir *Thomas* should sub-join matter so contrary to the right that he would infer for the *Scots*, by denying the right of restitution in the same manner. Not observing the old Maxim, *every thing is freed in the same manner that it is bound*.

He adds immediately, but they will say there's another way of acquiring *Fealty* and *Homage*, p. 143. viz. by force of Arms.

This he expressly denies to confer any right to *Fealty* or *Homage* ; and as the true Question is of *Liege Homage*, not strictly *Feudal* ; he not only denies the Right of the *Scots* to govern the *Britons* among them, but overthrows the Right of most Kingdoms which have been founded in consent, occasioned by force of Arms.

But it may here deserve consideration.

1. Who were first settled here.

2. Whe-

2. Whether the *Picts* and *Scots* were ever
Lords of the whole Island, and when they or ei-
ther of them began to be formidable to the Bi-
ttons,

Buchanan, who has set off the Scotch conjecture with all the art of the best of Poets, to whose commendation it is to make Fictions hang together and pass for Truth; tho he to Honour his Country men, gives them Kings 300 years before our Saviour, receiving the Authorities of Julius Caesar, and Bede agrees, that the first Inhabitants of this Island were Britons. But then to make good title to the Scots, he says, 'in process of time, the Picts granting them empty Seats in their parts, the Scots came the last, as at Accession to those that were here before.'

He takes notice of an objection against the Dominion of either *Pitts* or *Scots*; here, in *Mariæ*'s time, which was about the year 80 after Christ.

Quinto Caledonios, Ovidi ! Visure Britannia.
O Quintus Ovid! who art going to see the Caledonian Britons.

And he agrees, that *Bede* in his Book calls those who were beyond the *Picts' Wall*,

Britannos Peregrinos & Transmarinos.

Foreign and Transmarine *Brisons*.

Which, take it either as the difference of customs and the small Waters which divided them and the other Britons rendered them, as it were Foreigners, beyond the Sea, or that they of Foreigners were become Britons; in either Sense proves, that the Empire was then with the Britons. Nor does Buchanan's disguise of the truth here help the matter.

*Sed nullus eorum prop-
terea Pictos eos fuisse negat.* But, says he, no one
of them therefore de-

· ev
· or s
· ne Br
· ectur
· e com
· together
· Coun
· ore ou
· ins Ca
· bitant
· make
· ocess o
· ects: in
· as an
· inst the
· Marti
· o after
· itannu
· Caledo
· ok call
· customs
· and the
· reigner
· rs were
· hat the
· Bucha
· natter.
· no one
· ore de
· sid
· sed jure tamen opimo Bri-
· tannos vocant, nam que-
· madmodum tota Insula
· Britannia vocatur, ita u-
· niversi ejus incole Bri-
· tanni merito vocantur.

nies that they were *Picts*: Nevertheless they most rightly call them *Britains*; for the whole Island is called *Britany*; so all its inhabitants are deservedly called *Britains*.

Indeed Buchanan has a particular Whim of his own, which will appear without Foundation, as if none but the more *Southern Inhabitants* were ever called *Britons*.

Thus 'tis plain enough, that both the *Scots* and their forerunners the *Picts*, came in upon the Possession of the *Britons*: Whether they were admitted to settle here without any acknowledgment, I shall soon enquire. As to the time of the settlement of the *Scots* as a Kingdom, a Bishop of great skill in Antiquities, transcribes this memorable passage from the most Learned Man, perhaps of many Ages, the incomparable Bishop Usher.

I do not believe, that there is any Writer that lived within a thousand years after Christ, that once mention'd the name of *Scotland*, and doth not mean *Ireland* by it.

This doubtless was true; but if, as the present <sup>An Historia
cal account
of Church
Govern-
ment, as it
was in
Great
Britain,
&c. ed.</sup> Bishop of Worcester, seems to hold, *Scotland* was not the name of any Country besides *Ireland*, till the *Scots*, from *Ireland*, who had mixed with the *Britons* and *Picts*, had the Government of all that part of *Britain*, of which they are now posseſ'd; that will evidently appear to fall later than either Bishop Usher, or he places it, as the *Northian Hymbrian Kingdom*, which Bishop Usher shews to have extended a great way into *Scotland*, maintain'd its extent under Earls, within the Confessor's Reign,

How-

However, I agree, that they not only had a Settlement in *Britain*, but *Kings* of their own within this *Island*, before the year 1000, but that the Kings and People were under the Monarchy of this *Realm*, I shall soon shew.

It must be agreed, that the flower of the *British Youth*, having gone beyond Sea with *Maximus*, whose Father was a *Briton*, the rest of the Inhabitants who had not been used to the War, were miserably harassed in those places, which lay open to Sea Robbers.

Gildas f.
12. Gen-
tibus tran-
smarinis
vehemen-
ter sienis
Scottora
Circione
Pictorum
ab Aqui-
lone per
annos Cal-
cabillis
Multos
stupet ge-
metq;
Tetri
Picto-
rumq;
Greges,
etc.

Gildas names the *Scots* from *Ireland*, and *Picts* from the North as the chief of them; but 'tis plain, that those were but predatory irruptions, and whatever footing the *Picts* might keep for any time, the *Scots* came but for booty, and a *Roman Legion* soon obliged both *Scots* and *Picts* to return after their first attempt. The *Legion* being gone back, 'the *Scots* and *Picts*, tho' for the most part at variance with one another, agreeing together in rapaciousness, returned to the spoil which, excepting the excursions, in which they destroyed the Corn in neighbouring parts, seem to have reached no further than a little way within the *Picts* Wall; and the Region, where the People for want of Bread, lived by Hunting was certainly no more than the Country thereabouts; and yet the *British Nation*, as they then had Parliamentary Assemblies, might well joyn in an Embassy for assistance against such troubleson Visitants.

'Tis ridiculous to imagin, that the *British* were entirely subdued, and no part was free from the insolence of Conquerors; for, if it were so, 'tis certain they could have no opportunity of Assembling to joyn in the complaint, without which

could not have been *National*. But as this was a solemn *Embassy*, and an offer to the Romans of further Subjection than ever had been before; it is like other *Councils* of all Britain, which shall shew upon the like occasions, and such as manifest the freedom of them who met in Council. The *Scots* being loaded with booty returned to their Country; but, as *Gildas* relates, 'the *Picts* then first, and from that time forward, rested in the furthest part of the Island; sometimes making prey and wast, the people being spoil'd during such Truces, an horrid Scar is drawn over, another more violent growing out. For the devastation ceasing, the Island bounded with such plenty, that no past Age had remembered the like, with which of all kinds Luxury encreased.

Then he speaks of the choice of their Kings, for the worst qualities, upon which 'tis observable.

1. That this account from *Gildas*, whom Sir C. pretends to follow, is far from countenancing Sir T. C's assertion, without mentioning any Author to colour it, that 'the *Scots* and *Picts* not being numerous enoughto people the p. 92. *Britons*, those the *Britons* did then hold, and gratefully accept, from the bounty of the *Scots* and *Picts*, paying Tribute to the Conquerors; giving Hostages, submitting to them in every thing Divine and Humane, and abjuring the protection of the *Romans*.

2. That the beginning of the power of *Picts* and *Scots*, or either of them here, was after Maximus had drawn the *British Soldiers* into Foreign parts; but this *Maximus* did not Reign here till the year 383 after Christ: So that the Scotch King-

Kingdom 300 years before Christ, must have been in Ireland.

Nennius, who follows next after Gildas, shews that in truth the depredations of the Picts and Scots, were chiefly, if not wholly upon those Britons, who inhabited that part which the Picts gain'd possession of; and tho' the Scots had been there in his time, the Picts had the Dominion over such of them as resided there.

Having spoken of the settlement of the Britons here, he adds,

Post intervallum an-
norum non minus 900
Nennius *Picti venerunt, & occupa-*
verunt Insulas qua Oreades
Vocantur, & postea ex insu-
lis affinitatis vastaverunt
non. Modicas & Multas
regiones occupaveruntq;
eads in plaga sinistris Bri-
taniae & Marent usq; in
hodiernum diem. Ibi tertia-
am partem Britannia re-
nent usq; nunc.

Several years, after no fewer than 900 Picts came and occupied the Islands, which are call'd the Oreades, and afterwards from neighbouring Islands, wasted in small and many Countries, and occupied them on the left side of Britain, and remain there to this day. There they to this time hold a third part of Britain.

Here it appears, that what the Picts and the Scots (who fought under them) wasted, the Picts kept, and that all this must have been most what is now called the Kingdom of Scotland, being a third part of the Island of Britain. As this was by Nennius taken to be within the British Kingdom; to be sure Britain could not meant only of that part which was within the Picts Wall, with which interpretation the Sa-

would endeavour to evade the Ancient Authorities, proving the whole Island to make one Monarchy. That the *Picts*, settled here before the *Scots*, and all the power which either of them had, was truly *Pictish*, appears by the *Saxon Chronicle*, which *Bede* plainly follows, but I chuse to use the words of the *Chronicle*.

' The first Inhabitants of this Land were *Brites*, vid. or *Britones*, who coming from *Armenia*, settled at first in the Southern part of *Britain*; afterwards it happened, that the *Picts*, from the Southern part of *Seythia*, carried very many long Ships, and arrived at the Northern part of *Ireland*, and asked leave of the *Scots* to inhabit there. But they would not permit them, yet the *Scots* answer'd, we can nevertheless help you with our advice. We know another Island Eastward from hence; where, if you think fit you may dwell, and if any Body will resist you with Arms, we will help you to subdue it.

' Then the *Picts* went from thence, and entred this Land in the Northern part; for, as we said before, the *Britons* had the Southern. Then the *Picts* desired Wives of the *Scots*, with that condition, that they should always take their Royal Stock from the Female side, which was a Custom observed by them long after.

This Fundamental right of the Scotch Royal Family, I may allow to continue a descent from the Irish Scotch Kings; but as it is far from making their part a Scotch Kingdom here, till they prevailed over the *Picts*; so it is a fatal Bar to the Divine Right of that long Succession of Kings; unless they form a new Scheme of the Patriarchal Power, in which that Notion is founded.

Vid. Sir R. Filmer's Works, and the Refutation of his absurd Notions in a Treatise about Government. An. Carl. III. 75. The learned Publisher of the last Edition of the *Saxon Chronicle* observes, that this coming of the *Picts* was according to H. of Huntingdon Book 1. 10. years after the *Britons* were settled here, and as Mathew Westminster holds 75 years after Christ, but as appears above, even the *Picts* were not formidable here till long after. If here we should distrust the British Writers, and rather believe the *Canons* who held, that the part of Britain where the *Picts* settled, was not cultivated by the *Britons*, yet, that could not give the *Picts* a right of occupancy to an independent Government, since they ow'd their possession to the permission of the *Britons*, who had a *Monarchy* here long before; and were under the obligation of local Allegiance, to defend the right of the British Crown; and this, as will appear, was always maintained by the *Britons*, and after exacted from the *Picts*, and yellded by them.

Vid. Galvin's case & Rep. The *Chronicle* observes, that many years after the *Picts* settled here, some of the *Scots* from *Ireland* coming into Britain, got some part of this Land. That their Leader was one *Reod*, from whence they were called *Dacredii*: He in *Bede* is called *Reuda*.

Chron. Sax. p. 2.

An. 597.

The first time that I find the *Scots* mention'd in the *Chronicle*, as a body of People acting here without the *Picts*, is in the year 597. where speaking of *Ceolwulf*, who began that year to Reign over the *West Saxons*, it says, 'he had continual Wars either against the *English*, or the *Britons*, or the *Picts* or the *Scots*'.

Whether these *Scots* acted by themselves with the power they had here, or in conjunction with *Scots* from *Ireland*, and so under a *Scotch King*, does not appear.

I should think it probable, that they looked upon the head of their *Cann* in *Ireland* as chief, if I did not find undoubted Authority, that they were Soldiers and Subjects under our *Northan Hymbrian King*, for which I have no less a Voucher than the *Saxon Chronicle*, which of the year 603 says.

An. 603

*Her Agban Scotta
Syng feit with Daelreodis,
With Ethelferthe
Nortymbra Cing, & Da-
stan, & man of fles-
h neft ealne his here.*

In this year Agban King of the Scots fought with the Daelreodians, and with Ethelferth, King of the Northan Hymbrarians, and almost all his Army was cut off.

These Daelreodians, as the Chronicle had shewn before, were those Scots who came hither under *Eda*; and, as this passage shews, had put themselves under the protection of the *Northan Hymbrian Kings*, and made part of *Ethelferth's Army*.

Bede, who agrees with the Chronicle in substance, calls that King of the Scots *Edan*, and both call the same Man King of the Scots. To set which matter in a true light, it will be convenient to give some parts of *Bede*, and compare them with the Chronicle.

Bede speaking of the Monk *Austin's coming* hither, says,

Bede lib.

I. c. 3, 4.

'In these times the most Valiant and Ambitious King *Ethelfrid*, who wasted the British Nation more than all the Chieftains of the English, Reigned in the Kingdom of the *Northan Hymbrarians*. *Edan* King of the Scots, who inhabited *Brittain*, came against him with an immense

Army ; but being overcome fled away with a few, nor from that time to this day, did any one of the Kings of the Scots dare to come into Britain, to fight against the Nation of the English.

Vid Sir
G. M.
Antiquity
of the
Royal Line
defended
p. 16.

I will agree, that by Britain, Bede in one place means that part which was more immediately in the possession of the Britons and Saxons, and after he has followed former Writers, calling the Picts and Scots transmarine People, qualified and restrains the expression to what they were in his time.

No Sir, T.
C. carries.
is in 734.

But in this place of the Scots, it must be meant of those who truly were transmarine, to distinguish them from the Dacredians, or else Bede departed not only from the Saxon Chronicle, but from Gildas. Bede carrying his History to the year 731, 'tis to be remember'd, that from the overthrow of Edan in the year 603 to 731, the Scots did not venture to come into Britain.

Lay but Bede and the Saxon Chronicle together and as it appears, that the Scots which Ethelfrith subdued, were those who lived out of Britain the Saxon Chronicle demonstrates, that they lived out of the Island of Britain, shewing, that the Dacredians, the Scots who came hither under Reod or Reuda, fought under the Northern Hibernian King, and therefore the King of the Scots was the King of them who inhabited Ireland.

That thus it was taken in the Saxon Chronicle which is a better Authority than Bede, cannot be denied. And in the same sense speaking of the year 429, it says of St Patrick, who all agree have presided in Ireland; 'That year he was sent by Pope Celestine to Scottum, the Scots. Upon which Florence of Worcester thus comments, 'St Patrick

' Briton by Birth, is consecrated by Pope Celestine,
and sent to the Archiopiscopal See of Ireland.

It seems, Edan King of these ~~W~~ Scots sup-
ported the *Picts* of *Lodeny*, which was the head
of *Pictland*, and yet continued under the Nor-
thern Hymbrarian Kingdom, as I shall shew, till within
the Reign of Edward the Confessor.

That after the time of King Ethelfred's striking
a Terror into the *Scots*, *Lodeny* or *Pictland*, was
immediately under the *English*, I have no less
authority than *Bede*, of whose credit Sir T. C.
is very careful, *Bede* speaking of the year 675. *An. 676.*
Vid. ihi

' The Province of the *Picts* was then under the *Sax.*
Government of the *English*. So that the *Saxon* *Cron.*
Chronicle and *Bede*, joyn in putting it beyond all
question, that as the Province of the *Picts* was un-
der the Kings of the *Northanhymbrians*; So were
all the *Dacriodians* or *Scots* that settled here.

That thus they continued all *Bede's* time he in-
timates plainly enough, when giving the posture
of affairs in *Church* or *State*; when he left off *An. 731.*
Writing, he says.

The *Picts* have a *League of Peaces* (which that
it must have been upon the terms of Subjection,
the circumstances of the time, and the thread of
Bede's History evince) But the *Scots* are spoken *Fedus*
of only as *Inhabitants*, without any head of their *pacis*.
own Nation, for he says.

' The *Scots* who inhabit *Britain*, being content
with their own bounds, attempt no Ambushes
or Frauds against the Nation of the *English*.

That the *Scots* were under the Government of
the *Picts* in *Bede's* time, is more than conjecture,
for speaking of the declining state of the *Saxons*
from the year 684. he says,

Rodo C.

15. f. 348.

*En quo tempore spes e-
stis & virtus regni Anglor.
fluere ac retro sublapsa re-
ferri, nam Picti terram
possessionis sua quam re-
tinerunt Angli & Scotti
qui erant in Britannia,
Britonum quoq; pars non
nulla libertatem recepe-
runt.*

From which time
the hope and virtue of
the Kingdom of the
English began to fail,
and go backwards; for
the *Picts* recover'd the
Land of their possession,
which the English and
the *Scots* who were in
Britain had, and some
part of the *Britons* Li-
berty.

"Tis evident, that we must seek lower down
for any Kingdom of *Scots* among us.

The Author of the *Polycronicon* writ in the
time of R. 2, rightly says, ' the first King of the
' *Scots*, was *Kinedy* or *Cuned* the Son of *Alpin*;
but, was plainly mistaken in thinking that by
dispossessing the *Picts*, he annexed that part which
the *Picts* Inhabited, to what was at the time of
his Writing, the Kingdom of *Scotland*.

For as I shall shew, the chief *Pictland*, *Lodeng*,
they had long after from the Grant of one of
the King's of *England*; and besides, there were
Britons in other parts of what is now called
Scotland, who were not under the *Scotcb* Go-
vernment first settled in *Britain*.

That *Cuned* was the first King of the *Scots* set-
tled here, we have the Authority of *Nennius*
he speaking of the *Picts* who had obtained part
of *Britain*, mentions their continuing a People
here, till they were expelled by *Cuneda* and his
Sons, from all the *British Regions*.

Th

This Cunedor Cuneda, the same with Kinedy the son of Alpin, according to the Register of Mails, began his Reign over the Scots in the year

An. 843.

43. And this is the earliest date of the Ancient Kingdom, which was after the British Monarchy, was translated to the Saxons.

This passage in Nennius may rectifie a mistake ^{The time of} Nennius. of the time when he writ. The late Learned Dean of York, Dr Gale, being led by the judgment of the Person, who Titled the Cotton MS. of Nennius, held that he flourished about the year 620.

But the present Bishop of Worcester upon better grounds, places it about the year 850. Nennius B. of Worcester's Pref. therefore being of the very time when the Kingdom of the Scots in Britain began his Testimony against the Antiquity of their Kings here, ^{to his His} count.

must needs wipe off all Sir George Mackenzie's Artificial Colours.

He being aware, that it was impossible to prove any Kingdom of the Scots here for 1000 years after Christ; unless we could believe, that the part which the Scots now possess, was anciently called Ireland, applies all his skill to make it seem so.

For a tast of his skill, it may be enough to consider the proofs for his notion out of Bede.

' First, says he, Bede relates that Egfrid King of Northumberland, having sent an Army into Ireland under Bertus, he wasted the Country and Defence of the Anti-^{p. 164.} quity. the innocent People; and the next year having sent an Army to waste the Province of the Picts, ^{Bede lib.} contrary to the advice of his Friends, and of St Cuthbert, God suffer'd that Army to be destroyed, because the former Year he had rejected their Advice, that he should not invade Scotland, which did not wrong him.

To

Nordam
humbro-
rum.
Ne Sco-
tiam &c.

p. 165.

Bede f.
246. VId.
sp.

To disguise the matter, as if it were not likely, that *Egfrid* could be so powerful a Prince, as to make an Invasion by Sea ; Sir *George* calls him King only of *Northumberland*, when *Bede* calls him King of the *Northumbrians* or *North-
bymbrians*, which Kingdom comprehended se-
veral Counties. 'Tis further observable, that
Bede calls *Ireland* *Scotland*, or the Land of the
Scots ; but it would be a perfect fallacy thence
to infer that the Land which the *Scots* now pos-
sess here, was ever called *Ireland*. Sir *George*
is aware, that every one would discern this ; and
therefore, to make good his Notion says,

' To clear, that the *Scotia* here express'd wa-
' not *Ireland*, he adds, the *English* and *Scots* who
' abide in *Britain*.

That this could not be joyned to what were
before is evident, as there is no manner of cohe-
rence ; nor can it be imagined, that *Bede* should
make the *English* King *Egfrid*, to invade the *En-
glish* and *Scots* in *Britain*. But *Scots* being spoke
of by him residing in *Britain* ; it shews, that their
Kingdom or Land was not in *Britain*, but else-
where ; and indeed, *Bede* expressly shews, that
what Sir *George* supposes to have been *Scotland*
here, was *Pictland*, and restored to the *Picts*.

*Picti terram possessio-
nem suam quam tenuerunt
Angli, & Scotti qui erant
in Britannia &c. recepe-
runt.*

The *Picts* recover'd
the Land of their pos-
session , which the
English and the *Scots*
who were in *Brittany*
held.

Sir G. M's next passage from *Bede*, is where he
says,

' That Columbanus, an Abbot and Presbyter sir G. M. came in the year 565. from Ireland, to preach the 2. 166. Word of God to the Provinces of the North Piets, and converted them, and got from them possession of the former Island, for Founding a Monastery where he was Buried ; out of which Monastery (meaning Hy) many other Monasteries were propagated in Ireland and Britain, in all which the same Island Monastery was the chief.

' And he takes notice, that the Successor of this Abbot differ'd in the observation of Easter from the Church of Rome, till the year 716. And there after, he says, that Aidan was sent from this Island, for instructing the Province of the English. Now he had said before Aidan, who was sent from the Isle which is called Hy, which is the chief of the Scottish and Pictish Monasteries, and belongs to Britain. And there after he says, that Colman seeing his Doctrine slighted, and his Adherents despised, returned to Scotland.

' So that, says Sir George, we see, that that which at the first is called Ireland, afterward is called the said Island, and the Monastery in it the Island Monastery ; and there after it is called Scotland.

' Sir George must needs have had a mean opinion of his Readers, to think they could not see thro all this.

1. He makes Columbanus and Colman the same Person, whereas they were a Persons at great distance of time one from another, for Columbanus or Columbus, according to the quotation above from Bede, converted the Piets in the year

Bede An. 560. and Colman was Bishop of Lindisferm in the
560. year 665.

Cron. Sax.
665.

2. If all that Sir George has here tack'd together belonged to the same Person, it would prove no more than Ireland was call'd Scotland.

3. The said Island which he says, is call'd Scotland, is only the Island of Hy. If that was all the ancient Kingdom of Scotland, let the Nation take to themselves that Honour of Antiquity.

4. If Bede by the Province of the English meant all England and not Pictland, which Province he elsewhere says, was under the English; then by the like construction; the Province of the Picts comprehended all in Britain, who were not immediately under the English Britons; which, as has appeared above, was Bede's meaning, but where could Scotland or a Kingdom of Scots be then found but in Ireland.

p. 167.
Bede lib.
3. c. 27.

Sir George, I take to be no more fortunate in in his 3d passage from Bede.

Where speaking of a great Plague in Britain, he adds, this Plague also wasted Ireland with the same destruction, at which time there were many of the Nobility and Commons of England who in the time of the Bishops Finan and Colman, having left their own native Island for the greater Convenience, either of Divine Studies or strict Life had retir'd thither. All whom the Scots kindly entertain'd, and furnished with all things necessary, and gave them freely Meat and Books to Read and Learn in. And there-after speaking of Egbert who was among them he adds, that he was a good Example to his own Nation, and to the Nations of the Picts and Scots among whom he lived retiredly.

Here are two considerable variations from the Latin, which Sir George cites, for there is the word *exulabat*, which signifies he was Banish'd ; and besides, *Egbert* is laid by *Bede* to have set a good example, *Nationibus Scotorum sive Pictorum*, the Nations of the *Scots* or the *Picts*; shewing, that the Nation of the *Scots* were under the *Pictish* Government, they were rather to be called *Picts*.

Further *Bede* does not say, that the *English* went to those parts, where *Finan* and *Colman* were, but that it was in their time.

Besides, Sir George observes from *Bede*, that the Monastery of *Hy*, which was the chief residence of *Colman* belong'd to *Britain*.

But *Bede* distinguishes between *Britain* and *Ireland*; which shews, that what he says of *Egbert* was not of the time when the Nobility of *England* went to *Ireland*.

This appears not only in that what he says of *Egbert* is not connex'd to the other passage, but that the Nobility of *England*, *Secesserunt*, retired of their own accord, but *Egbert exulabat* was Banish'd.

Sir Thomas Craig not understanding when he argued against himself, so well as Sir George *Menzie* did, I shall have no need to produce out of *Nennius* and others any further proof, that the ancient Kingdom of the *Scots* was *Ireland*, than what Sir Thomas has afforded us.

In the Life, says he, of *Charles the Great*, *sir T. C.*
writ by an uncertain Author, but one who liv'd p. 79, 80.
at that time, this following passage is found. ex frag-
mentis an-
tiquissimis
histor. etia
ca. an. 850.

At that time a *Norman* Fleet having enter'd *Ireland*, an Island of *Scots*, an innumerable mul-
titude of *Normans* fell in Battle against them, and the rest made a shameful retreat.

Whence it is Manifest, that that *Island* was not only inhabited by our Countrymen, but the Government was also in the hand of the *Scots*.

*Defence of
the Anti-
quity.*
p. 111.

This is no more than our *Saxon Chronicle* agrees, and fully obviates all, that Sir G. M. or others can produce for the Antiquity of their Kingdom here.

*Vid. De-
fence of the
Antiquity.
p. 100. 111.*

Thus, besides what our Historiographer has shewn of the fictitious League between *Charle-
maign* and the *Scots*; this shews, that if there were any such League at that time, it could signify nothing, it concerning only the *Scots* in *Ireland*, which all agree to be now part of the Dominion of *England*. And if there had been such a League, it was broken with a witness 59 years after, when the *Normans* invaded *Ireland* to their great loss and disgrace.

C H A P. VIII.

be First Preparatory to Authorities of the British Times. Of Liege Homage performed by the King of Scots E. E. I. when our King expressly reserved his Right to Liege Homage for the Kingdom of Scotland : Of the Grounds for it declared by him, and confessed by the People of Scotland in the 19th of his Reign. His adjudication of the Crown of Scotland, in full Parliament to Balliol. The Fealty Sworn and Homage done by him, His Rebellion, Forfeiture and Resignation of his Crown to E. I. in the 19th of his Reign. And of the then deducing the Right of Superiority and Dominion from the British Times.

TO guard myself against the imputation of being credulous of British Fables, while I reflect many supported with great names among the Moderns ; 'twill be requisite to shew what a King of England, and his Learned Council, of which at that time all the Judges were part, held before any one Scotch Author has appeared ; besides Manus Scotus, and the Compilers of the Register of charters within their Country, which are Authorities directly against them.

As to the nature of Homage in our Law, before the time of W. I. I have shewn above, that retation was a sufficient ground for it, the no lands were held immediately as a fief ; and however, that Liege Homage much less implied he holding any Lands. If therefore, in that time which

which leads me to enquiries backward; the King of Scotland, while he was at full Liberty paid Liege Homage, without any regard to Lands in England held by the Scotch King; and the King of England, while he accepted that, asserted his Right to have Homage for the Kingdom of Scotland as Feudal, whenever he should require this; it must be agreed to me, that E. I. and his Parliament were under no necessity afterward in his Reign, to invent Arguments from the British time to justify his exercising the rights of a Superior Lord over the King and Kingdom of Scotland.

My worthy Friend Mr Petit, now deservedly Keeper of the Records of the Tower, before he had that reward of his Merit in those researches, Communicated to me a well examin'd Copy of the Scotch Kings Homage done, and Recorded in Latine 6. E. I. a true Translation of which follows.

Md. quod
In Parl.
Regis Ed.
&c;

1. Md. that in a Parliament at Westminster, on the Feast day of St Michael in the 6th of that King's Reign, in the presence of the Bishops of Duresm, Hereford, Norwich, Mr Thomas Bee, Prior of the Provincial Order of Preaching Friars, W. de Valens the King's Uncle, the Earls of Cornwall, Gloster, Waren, Warwick, and of Carryk, Rob. de Tybetot, Anthony Beck, Mr Rob. de Scardeburg, Ralph de Sandwich, J. de Lovetot, Walter de Hopton, Mr Jeffry de Aspale, Walter de Wynburne, Richard de Stapleton, Ralph de Hengham, Jeffery de Newband, J. de Cobham, W. de Brompton, Philip de Weleby, Tho. de Weyland, Walter de Heylynn, Richard de Holebrok, Bartb. de Sudley, Hugh Fitz Otto, Patric de Cadurc, Rob. Fitz Walter, and of many others, came Alexander King of Scotland

land, the Son of Alexander late King, to the said Edward King of England at Westminster, in the said Kings Chamber, and there the said King of Scotland offer'd to the said King of England to become his Liege Man, and to do Homage to him, and he did it to him in these words.

' I Alexander King of Scotland become Liege Man of Lord Edw King of the English against all Men.

' And the said King Edward received Homage of the said King of Scotland, saving the right and claim of the said King of England and his Heirs, of Homage from the said King and his Heirs, for the Kingdom of Scotland, when he shall think fit to require it.

After this follows Fealty Sworn by the Earl of Arrie, in the name of the King of Scotland, for the lands he held of the King of England; but as no Homage was ever sworn, the Homage then done the King of Scots was full Liege Homage; such a Liege Subject owes his Prince, tho' he held no land of him; and yet, as the Kingdom of Scotland was within the English Empire, King Edward could not receive what implied as much, without saving for his right to have it in express terms, whenever he should require it.

However, it is enough for the present purpose to shew,

- That the Homage was not then paid for, or on the account of any Lands held by the King of the Scots in England, but for all such Lands as were Sworn to the King as Lord of those Fiefs.
- E. i. it's. claim of Superiority over the Kingdom of Scotland, was not an invention afterwards to colour proceedings, as Superior Lord of Scotland.
- In the claim and exercise of this Right, will appear, that E. i. acted with great Justice and Moderation.

G

Alex-

Optullit
idem R.
Sequitur
idem R.A
devenit
hominem
suum L. A.
genit sefa
seruicio
magnum.

Sive
Juli cl.
modice.

cum inde
regula ve.

Rot. de
Superio-
ritate
Angliae
In Turri
Lond.
Al. Nob.
de com-
munitate
dict. Regi-
ni Scotiae.
Vestris
uti consti-
tutis op-
portunit.
A Town in
Scotland
upon the
Tweed.

Docu-
ments.

Aleicander the third of that name King of Scottie being dead, there were several Competitors for that Crown, who applied to E. I. for Investiture K. Edward, that he might proceed with such solemnity as the matter required, summoned a Parliament of the Scots; and by Justice Brabazon demanded of the Bishops and other Ecclesiastical Prelates the Earls, Barons, and other Nobles of the Community of the Kingdom of Scotland, a recognition of his Rights, declaring that in that, and all other things concerning the Kingdom of Scotland, he would use their seasonable Council.

They earnestly prayed time, and tho they had sufficient notice of the end of their meeting, yet of abundant favour they were indulg'd to the next day, when they appeared in the Church of Norm.

They still desired a further day to consult with the absent Nobility, Prelates, and Commons of Scotland; and that, as before, there might be a special Summons for recognizing the Superiority and direct Dominion over the Kingdom of Scotland, which the King said was his Right. Upon this the King gave them to the 2d of Jan. then next following, that they might in the mean while consult with the absent Nobility, Prelates, and Commons of the Kingdom, upon the Premises; and to deliberate, and on that day precisely to answer what he had required of them, and to exhibit and propose, and shew precisely and peremptorily, whatever Muntions or Writings, or any other Authorities they had, which might exclude him from his Right of Superiority, and his direct Dominion of Scotland, or from the exercise or execution of his said Right.

' And might by any way of right weaken the Reasons and Authorities shewn for him, and his said right, by more valid and efficacious ones. Protesting, that he would and was ready, as the Laws would permit, to allow them to them, and what Justice should perwade in the event : and notified the same by the Bishop of *Durham*, whom he made his *Commissioner* to the *Prelates* and *Nobles of Scotland*, and that there might be ^{Ad hoc.} *Orationum* ^{sum} a Public Instrument made of it, notified to the *Prelates* there present before many *Witnesses*, upon what evident Reason and Authorities the said King asserted, that the Right of Superiority, and direct Dominion, over the Kingdom of Scotland was his, and ought to belong to him, in Right of the *Crown* of the Kingdom of England, and the pre-eminence of his Royal Dignity. He also shew'd, beginning at the time of *Brute*, and so successively descending to King Edward's time, what was writ in Ancient Chronicles and Books found in divers Monasteries of the Kingdoms of England and Scotland, viz, in the *Chronicles* of *Marianus Scotus*, *Wm. of Malmesbury*, *Roger of Hoveden*, *Hen. of Huntingdon*, and *Ralph de Dicey*, in many Books ; and also the Letters Patents of Holy Popes, with their Leaden Bulls appendant, according to the manner of the Court of Rome, and other Writings approv'd by the Apostolic See. And, says the Notary, I will in this public Instrument or Process, write them in order word for word, neither adding or taking away any thing, which may change the fence or pervert the meaning.

Then follow the Authorities at large, agreeing with what I shall afterwards produce.

This gave so general a satisfaction to the Kingdom of Scotland, that a Representative of that Kingdom met upon the King's Summons in a Parliament at Berwick, which began on the 17th of October.

An 1192.

(a) Per:
legende
confue-
cud, reg-
nor, qui-
bus p[ro]m
ptis.
(b) Con-
fusus u-
triusq[ue]
regni
Nobil. &
Prel.

On the 17th of November the King, judging by the Laws and Customs of the Kingdoms over which he presided, adjudged the Kingdom of Scotland to John Balliol, with the consent of the Nobles and Prelates of both Kingdoms, saving the Right of the Crown of England; appointed a day for Balliol to swear Fealty for the Kingdom of Scotland, and gave him a Writ of Sessin or Investiture of the Kingdom.

On the 10th of November, Balliol swore Fealty at Norham in the French Tongue, which as the Notary certified, had this literal meaning.

Ego Jobannes de Ba-
lliol R. Scotor. fidus & fidelis
ero vobis Dom. Edwarde!
Dei Gratia R. Anglie
superiori dno Rni. Scotie &
vobis fidelitatem facio de
eodem regno Scotie, quod
de vobis teneo & clamo
tenere, & fidem & fidelita-
tem vobis portabo, de vita
& Membro, & terreno bo-
nore, contra omnes homines
& fideliter recognoscam,
& vobis faciam, servitia
vobis debita de regno Sco-
tie ante dicto, sicut me
Deus adjurvet, & haec
Dei Evangelia.

I John of Balliol King
of the Scots, will be true
and faithful to you Lord
Edward! By the Grace
of God King of England
Superior Lord of the Kingdom
of Scotland! and do
Fealty to you for the
same Kingdom of Scotland,
which I hold of you & do
and will bear Faith and
Fidelity to you of Life
and Limb and World
Honour against all Men
and will Faithfully re-
cognize, and do to you
the Services due from
the said Kingdom of
Scotland. So help me
God.

God, and these God's
Holy Gospels.

This is register'd to be in the presence of John Archibishop of Dublin, the Bishop Anthony of Dunelm, W. of St. Andrews, Rob. of Glasgow, W. of Ely, and J. of Carlisle, Henry de Lacy Earl of Lincoln, J. de * Began, W. de Ros, Patric Earl of March, Walter Earl of Munster, James Steward Of another place he is Scotland, Alexander of Engerd, Alexander of Ba-writ Westm, Lord of Cawdor, Patric of Graham, W. of St. Gen, he was Clare, and several other great Men and Barons Of Ireland: & their Kingdoms; especially call'd and ask'd to be Vid. rot. Winesse, On the 6th of November following, Stat. de John King of Scotland did Homage at New Castle temp. E. upon Tine, in the Palace Hall in the French tongue, which the Notary thus turned into Latin.

Domine mihi, Domine Edward! Superior Dominus regni Scotorum, Ego Iohannes de Balliol, Rex cotorum devenio vester amo ligatus, de toto regno meum cum pertinentijs, & mihi eo quod appendit. et quidem regnum te- o & debeo de jure ac amo pro me & hered. suis Regibus Scotorum, tenere hereditarie, de vobis & hered. vestris Regibus Angliae, fidei, fidem ac fidelitatem trabo vobis & hered. vestris Regibus Angliae, de- sa, & membro, & ter- bo honore, contra omnes

My Lord, Lord Edward! Superiour Lord of the Kingdom of Scotland, I John of Balliol, King of the Scots, become your Liege Man for the whole Kingdoms of Scotland, with the Appurtenances, and every Appendage, which Kingdom I hold, and ought of Rights and Claims to hold Hereditarily, for me and my Heirs Kings of Scotland, of you and your Heirs Kings of England, and will bear Faith and Fidelity to you and your Heirs, Kings of England,

*bommes qui possunt vivre
re aut Mort.*

land, of Life and Limb
and Worldly Honour, a-
gainst all Men who can
live or dye.

This was in the presence of *John Archibishop of Dublin*, and *J. Bishop of Carlisle*, the *Earl Henry de Lacy of Lincoln*, and *J. de Waren of Surry*, *John of St John*, *Robert of Tibetot*, *Brian Fitz Alan*, *Nic. of Segrave*, *Gilbert of Tornton*, *Roger of Brabazon*, *Robert Malet*, *Robert of Hertford*, *J. of Langeton*, *Chancellor of England*, *Hugh of Cresingham*, *J. Wogan*, *J. Lovel*, *Walter of Langeton Canon of York*, and *Keeper of the Wardrobe of the King of England*, *J. of Brokensford*, and *Gilbert of Rouberry*, the *Kings Clarks*, and several other Prelates, Greatmen, Peers, Knights, Nobles, and People, of both the Kingdoms of *England and Scotland*, especially called for that purpose.

After this, upon a complaint of a *Burgess of Berwick* against the King of *Scots*, King *Edward* sent *Justices* to do right to the Party, upon which the King of *Scots* complained, as if it were a Breach of King *Edward's* promise, that Causes should not be drawn out of the Kingdom of *Scotland*. However King * *Edward* insists upon his right, and Sir *Roger Brabazon* his Justice there, shews, that whatever the King had promised the People, when they were more immediately under his Government, this could be of no avail now they had a King, and ought not to deprive the King of *England* of his Right as *Superior Lord*, the *Dernier resort* to whom

*Extra
regnum
minime
traheren-
tur.*

* *VM. Vaughan's*, cap. f. 281. *Craw v. Ramsey* where *Justices Vaughan* speaking of a Prince holding a Kingdom *Territory as Homager and Liege Man*; upon the same Ground, *Magnulf appealed to E. i. ut Superiori Domino Scottie.*

was involved in the very nature of the Superiority.
Besides, to avoid all disputes, the King of Scots, formally released King Edward of his promises made to the People, while they were without a King.

One Maoduf having lodged another Appeal, tho the King of Scots at first appeared in King Edward's Parliament to answer the complaint, he having enter'd into a secret Alliance with France, declin'd the Justice of King's Edward's High Court of Parliament, sent our King a defiance, pretending to discharge himself of his Oath of Fealty, and the Homage which he had done.

King Edward having success in a War thus raised by France, ordered a process to be drawn up against Baliol as a Traytor. In the process his League with France, and the Transactions between them are set out at large.

As the Record has it.

'Therefore the King of England observing so many Damages, Reproaches, Injuries, and so seu ut Offences to the disherison of himself and destruction of his People, to be Traiterously committed against him, and the Inhabitants of his Kingdom, and not being able by reason of his Oath, by which he is bound to the conservation of the Right of the Crown of his Kingdom of England; further to tolerate such execrable, detestable, and nefarious offences, nor leave his rights undefended; since the said King John and his People under him, would not suffer themselves to be justified by the Laws; the said Kingdom, which as appears more fully above in the process, was Fendal to him and his Ancestors Kings of England, for the causes aforesaid being committed; or, as is commonly said Forfeited; War-

also having by the Counsel of the Earls, Barons, and other Peers, and Great Men, of the Kingdom of England, according to the Laws and Customs of the Kingdom of England, had been declared against the said King of Scotland and his Nation; the said King of England had extended the strength of his power against them; and so proceeding against them as Perjured Notorious Traitors, and Contumacious Rebels, and his Public Enemies; in right of his Propriety had subdued and subjugated them to the Dominion of him the King of England. Which being so, the said John King of Scotland, with the Earls, Barons, and all and singular other Nobles, Great Men, and Peers, of the said Kingdom of Scotland, with the Prelates of the Churches, returning to their duty; and, as they said, vehemently grieving for the Offences they had committed came to the said Lord the King of England, and surrendered themselves to him, and submitted themselves to his Grace and Will, yet at different places and times.

Also the said King of Scotland, openly and publicly acknowledged his Treason and offence abovementioned, and Confederacy enter'd into with the King of France; and that, contrary to the Duty of his Homage and Fealty; and for himself, his Son, and the Inhabitants of his Realm, simply and absolutely revoked the said Confederacy, as far as it had proceeded in Fact, spontaneously and perjuriously. Moreover, especially and expressly renounced, all plots which might arise from thence to himself, his Son, or the Inhabitants of his Realm, and the said Kingdom of Scotland, and the Right which he had in and to the same; and his Royal Dignity, Earls, B.
formally as they C
by fear, and exec
bound t
The n
seems to
Charters
which ca
Atoms
Letters v
Iohan de
Salus, Pur

with the Honour of *Homage*, and *Fealties* of the Inhabitants of that Kingdom, and all and singular the appurtenances to the Royal Dignity, he to the same his Lord, the Lord the King of England freely, purely, simply, and absolutely resign'd, saving to him only Life and Limb. Therefore the said Kingdom of Scotland being subjugated to the Dominion of the King of England, the Prelates of the Churches, the Earls, Barons, and other Nobles, Greatmen, and the Magistrates of Cities, and Boroughs, and Commonalties, of the said Kingdom of Scotland, coming to the Faith and Will of the said King of England, did to him *Fealty* and *Homage*, as to their immediate and proper Lord of the Kingdom of Scotland.

All which is attested by a Public Notary, this was in the year 1293. which was the 21st of E. I. but as appears by a Record made up by a Notary in the 24th of his Reign, the Nobility of Scotland were encouraged by France to enter into a new Conspiracy against the Crown of England; for in that year the Steward of Scotland, the Bishops, Earls, Barons, Knights, and Communities of Scotland, formally renounced all Confederacies with France, as they declared spontaneously and not compell'd by fear, and swore to be true to King Edward; and executed Deeds or Charters, wherein they bound themselves and their Heirs to this.

The renouncing all *Confederacy with France, seems to have been by word of Mouth; the Charters of all were the same in substance, of which take an instance in that of Sir John de la Hay,

A tous ceans que estoit To all those who
Letters verrantou orrane shall see or hear these This is a
Robert de la Haye Chtr. Letters, *John de la Hay*, referred on
Digne salut Purcoo que jee su Knight, sends greeting, the Publick
Wm minister a foy et amisté because I am come to Notary.

the

du tres noble Prince Mon-
 cibit sur Edw. par le grace
 Dieu Roi d'Engliterr sur
 d'Irland, & Ducs d'Aqui-
 taigne. jeo promet purmoi
 & mes Heirs surpein de
 corse, d'Avoire & surque-
 conq; nous peussons encoure,
 que nous ly servirons bien
 & leaument, contrees
 gentz qe purront Vivre &
 Morrir, toutes les fois quo
 Nous seroys, requis ongar-
 niz de par mr sur le
 Roy d'Engliterre avant
 dictiou ses Heirs, qe nous
 leur damage ne souvronte.
 Nous nel desborbeons a
 tot Nostre poer le leur fa-
 geoms a Savoir. E acques
 choses tenir & garder jeo
 oblige moi & mes Heirs,
 etous mes biens : e outre jeo
 alioiur saintz Evangelis.
 En tesmoignance de quen
 chose jeo ai fait faire cestes
 Letters ouvert. Sealees de
 mon seal. Don ala vile
 dest. John d'Perth, le vint-
 iisme secunde jour de June
 l'an du regne nostre Seig-
 neur le Roy d'Engleterre
 quantdit vintisme quart.

the Faitb, and to the
 Will of the most Noble
 Prince my dear Lord Ed-
 ward, by the Grace of
 God King of England,
 Lord of Ireland, and
 Duke of Aquitain. I pro-
 mise for my self and
 my Heirs, on pain of
 Body and Goods, and
 upon whatever we can
 incur, that we will
 serve him well and Loy-
 ally against all Men, who
 can live or dye, at all
 times that we shall be
 required, or warned on
 the part of our above
 said Lord the King of
 England, or his Heirs:
 and that we will not
 know of their damage,
 which we will not his-
 ter with all our power,
 and will acquaint them
 with it.

And these things to
 observe and keep, I
 oblige my Self and my
 Heirs, and all my Goods
 and moreover, I have
 Sworn upon the Holy
 Evangelists. In Wi-
 ness whereof I have
 caused the Letters to
 be made Patent, sealed
 with my Seal. Given

at the Town of St John
of Perth, the 22d day
of June, in the 24th
year of the Reign of
our above-mentioned
Lord the King of Eng-
land.

This and all other Submissions and Charters,
hereupon, are thus attested by a Publick Notary.

*Et ego Andreas quoniam Gulielmus de Tangs
Cler. Ebor. dictæ sacro
lante sedis Apiae publicus
Authoritate Notarius, qui
remissis omnibus ac singu-
lit, una cum superscriptis
festibus diebus & locis per-
above interfuit, eaq; sic
ng of vi vidi, ab excellenti
Heir Prince domino Edwardo
I not Dei gratia R. Anglie
image, & domino J. ea-
t him gracia quondam R.
ower, etor, nec non & venera-
t them illibus in Christo Patri-
u dom. Ant. permis. Divi-
ngs to Dunelm. & Walt. eadem
sep, I permissione Cov. & Litch-
and my old, Epis. nomine tamen
Good service ipsius Regis Angl.
I have restituti sacramenti virtu-
te Holy interrogatus, praemissa sicut
Wis debantur serlatim in istis
have tribus cartis simul su-
ters to manu propria scriptis
sealed Given in hanc formam re-
Given i inferendo in visdem*

And I, Andrew for-
merly Wm. de Tangs,
Clerk of York, by Au-
thority of the Holy A-
postolic See Notary, who
was present at all and
singular the premises,
together with the Wit-
nesses abovementioned,
and saw those things so
to be done, being re-
quired by the excel-
lent Prince, Lord Ed-
ward, by the Grace of
God, the illustrious King
of England, and Lord
John, formerly by the
same Grace King of Scots,
and also by the Reve-
rend Fathers in God,
Anthony, by Divine Per-
mission Bishop of Du-
resm, and Walter by the
same Permission of Co-
ventry and Litchfield, in
the name, and in the
stead of the said Lord
King Edward, by vir-
tue

omnium & singular. literarum tam semper fidelitat. Ebor. Ab. Prior Monialium Cratior. ecclesiar. Praelator, quam confector super fidelitatibus & Homagijis Nob. viror. Com. Coit. Villarum & al. Procerum & Regni Incolar. Regni Scotiae, ad fidem & voluntatem dicti Domini Regis Anglie vententium ut primitur, & fidelitat. & Homag. sibi facientium, sigillis suspendentibus conseruant. De verbo ad verbum nihil addens vel minuens quod sensum mutaret vel corrumpt. intellectum ad perpet. praemis memoriam transcript. & cum de Rob. cum dno. Nob. et Osbalde my de Capellano, & Waltero de Pontefracto Cler. prad. literar tenores diligenter examinavi.

tue of the Oath which I had taken, have with my own Hand writ the premises, in order as they were done in 30 membranes sewed together, and have brought them into this form, inserting in the same the forms of all and singular Letters, as well made upon the Fealties of the Bishops, Abbots, Priors, Monks, and other Prelates of Churches, as upon the Fealties and Homages of Noblemen, Earls, Barons, Knights, Commonalties of Towns, and other Peers, and Inhabitants of the Kingdom of Scotland, coming, as is above said, to the Faith and Will of the said Lord, the King of England, and doing Fealties and Homage to him sign'd with their Seals hanging thereto. For the perpetual memory of the premises, I have transcrib'd them word for word, neither adding nor diminishing any thing which would change the Sence, or pervert the Meaning, and

and have diligently examin'd the Tenors of the said Letters, with Mr Robert of Osbaldewyke Chaplain, and Walter of Pomfret Clerk.

The faithful Historian *Walsingham* of this very time, placing that in the year 1297, which is no material difference from the Records says, 'the ham f. 67; King sent thither *Anthony Bishop of Durham*, with full Regal Power, to whom within the time prescrib'd, came the King of Scots and his Greatmen: who, after many and various Treaties, nakedly and purely Subjected themselves, and the Kingdom of Scotland, to the Kings Will. For observing which Submission, John sent his Son an Hostage, and executed Letters in the French Tongue, which *Walsingham* exhibits, containing an absolute resignation of the Crown of Scotland. This appears to have been with the consent of the States of the Kingdom of Scotland.

Here it may be no small diversion to observe, what an Artificial turn Sir *Thomas Craig*, as he thinks, gives this, to furnish an Argument against the Right of Homage for the Kingdom of Scotland.

'Tho, says he, we should grant, what they will never be able to make out by any probable Argument, that the Kingdom of Scotland was a Free p. 372. Liege of England, and that the King of England had before that time, been Liege Lord of Scotland; yet I will make it plainly appear, that that Homage and Superiority Was destroyed by Edward. Then the King of England was, they say, Superior Lord of Scotland, and *Baliol* his Vassal for the same, if the Gods will have it so. 'But *Baliol*, who was a Cowardly Man, being deserted by his Subjects, and unable to main-

tain

tain the War, he came to the King of England at Brechin, and resigned all the Right he had to the Crown of Scotland, with the Homage of his Scots, into the hands of Edward his Lord, a Liege Lord, which is Recorded by all the Writers of both Nations.

How many of the Scots have been so fair as to own what the Record proves, that 'twas with the consent of that Nation, I cannot say; but for certain Sir Thomas is far from owning, this Truth.

To proceed with his profound Argument.

This Resignation being made, Edward was no more Superior or Liege Lord of Scotland, but Lord Proprietor of all Scotland, no less than he was of England.

This is admirable Tory Doctrine, but it must be agreed, that the King of England was no more Proprietor of Scotland after that Resignation, than he was before, unless the King of Scots was the immediate Proprietor before, which no honest Scots will say; for the Dominion of the Prince does not interfere with the Property of the Subject. However, Sir Thomas by his admirable skill in the Feudal Law, will prove the King of England by that Resignation became Lord Proprietor of all Scotland. For, says he, then there was no *Vassal* for the Kingdom of Scotland; but the Property was consolidate with the Superiority; which consolidation Lawyers call *confusio Dominii, uti lis cum directo.* Is not this wonderful in so great a Master, that he should not be able to distinguish between Dominion and Property? And tho the rule which he cites is only of Dominion, should infer, that by a confusion of the direct Dominion with the usufructuary, the absolute Property is acquired to the Superior Lord? when ho

Only

only becomes the immediate Lord, to them who before were under a mesne Lord.

And, indeed, when he observes how E. I. understood this matter, he shews, that the question of Property was never thought of: For Sir Thomas subjoyns; ' so Edward himself says, that by this Resignation he was legally constituted Possessor of the full Dominion; that all the Scots were his Subjects, and performed Fealty and Homage to him, as to their immediate Lord.' p. 373

Very good! Does this look like a proof, that the Homage or Superiority was destroyed, because the King of England was the immediate Superior to all the Subjects of Scotland?

But, says Sir Thomas,

' If by this Resignation the Property and profitable Dominion be conjoyn'd with the Superiority, it follows of necessity, that the Superiority is extinguished; for there can be no Superior or Lord, where there is not a Vassal or Inferior; for these are correlate, and if one be wanting, the other must of necessity fall.'

This mighty Argument by this time appears to depend upon the false term, *Property*; and indeed, if the King were the Proprietor of all, there could be no state of *Vassalage* besides *Villeinage*: but that the King of England could not be Superior Lord of Scotland, because they had no other Lord, is a gross inconsequence.

And yet upon this fallacious or weak way of arguing, Sir Thomas concludes.

' Therefore what is principally urg'd for the confirmation of this Homage, by our Neighbours, is the chief thing that subverts it, and if they confess that to be a true and lawful Resignation, it is not needful to confess any Superiority or

' Pro-

Property afterwards, except they can make it appear, that the Kingdom of Scotland was given *de novo* by the Kings of England; which no Man who hath not declared Open War against the Truth will, as I believe, attempt; for there's no Englishman who can for shame assert this Homage, or affirm that Scotland was given after that to be held in Fee of England.

Notwithstanding all that Sir Thomas has here urged with so much assurance, I may appeal to all Lovers of Truth.

1. Whether duly rejecting the false term (*Property*) the Resignation of the Crown of Scotland having been true and lawful, with the full consent of the Subjects, it will not be needful for them to confess the Superiority; not over their King, because they would have none till given them from hence, but over the People of that Kingdom?

2. Whether there can be any cause of shame, in asserting that *Investitures* from our Kings, to Men and their Heirs, upon Homage done for the Kingdom of Scotland, were Grants *de novo* of that Kingdom; to be held in Fee of the Crown of England?

3. Whether Edward Baliol the Son of John, and James the first, had not such Grants in Fee?

Whether since our Edward the 1st had the Kingdom of Scotland pleno jure, there has been any event of War, Transaction, or Circumstance, between the two Nations, which can reasonably be thought to amount to a discharge of the Subjection of the People of Scotland; and that immediate, if we suppose that no King of Scotland received *Investiture* from hence, after the *Resignation*, so full, and with such a National consent, as the Record made of it, evinces.

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C H A P. IX.

be second preparatory to the account of the British Times. The Pope's Letter 29 E. I. to dissuade our King from the exercise of his Superiority and Sovereignty, with some Remarks upon it. The Foundation laid by the King and Parliament of England, for Homage for the Kingdom of Scotland, from within the British Times.

Ho' Baliol was adjudged to have forfeited, Edward exacted no more from the Scots in his ancient right as Superior Lord, and did not assume the Stile of King of Scotland, being willing to give them a King.

And in Fact, his Assistance occasioned Bruce's retaining the Crown, and this is owned by T. C. himself, who agrees that, "upon Ed. p. 376. Edward's March into Scotland, the Scots had again taken Arms, most of the Nobility of Scotland joyned him; and among others, Bruce; which did mightily encrease his Army. p. 378. He farther owns, that they who opposed King Edward were routed, and that "Bruce is Branded with the infamy of that Battle, for having brought great Forces into the Field, and Fought with much Bravery, in Favour of King Edward.

Bruce, as appears by Walsingham, a most An. 1306
hateful Historian was not King of Scots, till 34 E. I.
the last Year of Edward I. which deprived
h that

()

that Victorious King of the opportunity of p. at fl
nishing, Bruce for his perfidy.

Walfing-
ham, t. 91,

It must be agreed, that, tha' he had held f. of Eng
with our King, and desired the Kingdom, a. Of a
his Gift ; he having in Dumfre's Church, p. racy
the Historian says, Sacrilegiously Slayn Cumin was by
chief Man of Scotland, who would not con High T
to his Treachery, while King Edward's J. and his
were sitting in the Castle, in time of full Pea some
set up for King, without staying to know King
Edward's pleasure.

'Tis certain, he continued King of Scotland by foul practice, with other Subjects of England, for in the 16th. of E. II. Andrew de Hotch, who as the Record has it, had been made Earl of Carlisle, for the Valour and Loyalty wh. he had shewn, in ayding and maintaining Rights of that King, and of his Crown, and ple, against all the King's Enemies, and by Na against Robert de Brus, and his other enemies Scotland; was Trayterously, by writing and O allied to the said Roberd de Brus, to maintain to be King of Scotland, in reverse to the K Intention in giving him that Honour. Be found Guilty of this Treason, it was adjud that he be Degraded, and that he and Heirs for ever, lose the Name of Earl. T after a more particular recital of the Fac had the usual Judgment of High Treason appears, that the agreement between him Bruce was, that he should maintain the K dom of Scotland to Bruce, and his Heirs;

(a) Rot. claus. 16. E. II. m. 26. d. in Scac. Rec. Inter recorda in Cur. recept. Scaccarij sub clystod. T Cam. Rot. 34. (b) En la reverse de la intention

of
that six Persons to be Named by him, and
ix by Bruce, should order all the great Affairs
of England and Scotland.

Of the like nature must have been the Con-
spiracy of Edmund Earl of Kent, who was by Judgment of his Peers Attainted of High Treason, upon an intercepted Letter and his Confession, that "he had agreed with some People Beyond Sea, for bringing an Armed Power into England, by the way of Scotland, to the destruction of the King and the great Men, who assisted him: Some both of Scotland and England were consenting to such Sedition.

Thus Great Men here, of ungoverned Ambition, promoted Troubles from Scotland; as Bruce, who set up to be an Independent King of Scotland, flattered the Ambition of the English Earl of Carlisle, and such others here, as were deluded with hopes of having the principal Administration of the Affairs of both Kingdoms.

But I would gladly know, upon Sir T. C's own avowed Principles, what Right the Choice of the People; then under the immediate Government of the King of England; could, contrary to their Oaths of Allegiance, confer on Bruce, who could not pretend to a Divine Right of Succession? That plainly, as far as such a Right goes, being with Baliol, and his Descendants claiming under an elder Sister. Upon which account, the Crown of Scotland, not being parable, was by the King of England, and the Nobility of both Kingdoms, adjudged to Baliol; according to the Laws of both Kingdoms.

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Walsing- But the thred of History, and subject Ma-
bam de ter oblige me to go a little back to the 29th
An. 1301. of our King Edward's Reign.

Then, as Walsingham rightly observes,

*Scoti cognoscentes Ro-
mæ omnia venalia, donis
Dominum Papam uberrimi-
mis ditarunt, petentes ab
eo consilium pariter &
auxilium contra Domini-
num suum Regem Ang-
liae.*

The Scots knowing that all things were to be Sold at Rome, enriched the Lord the Pope, with very large Gifts, asking from him both Counsel and Aid, against their Lord the King of England.

They having prepared the Covetous Father, to give apostolic Sanction, to any Legends they should impose, send their Traditions to be Stamp'd at the Mint of such Impostures. Then came that Letter from the Pope, by which Sir T. C. supposes the Decision of the whole Controversy, will be manifest.

Before the considering which, I cannot but observe, that the Traditions, which were sent to Rome, to be Stamp'd into current Truths, met with a fatal Objection, that they were not attested by the States of the Kingdom of Scotland, who neither did, nor could legally meet without King Edward's Summons; and therefore it is to be looked upon only, as the act of Rebels, corrupted with that French Money, which inabled them to Bribe a See flowing with Corruption.

Sir T. C. who would have all pass for Gospel, which came from a Pope, on the side of the Scots, says,

"The

Sir T. C.
p. 389.

Sir T. C.
p. 380.

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"The Pope proves by very strong Arguments, that the whole War was unlawfully undertaken; and that Edward did unjustly use the Scots, upon the account of that Superiority, which he did falsely conceive he had a Right to over their Kingdom.

With Sir T. C. lets hear what Boniface the 8th. as to say for Scotland.

"He alledged, that the Kingdom of Scotland Ser. T. C. did not belong to any other but the See of p. 381. Rome; nor never was a Fee of England.

Sir Thomas Craig owns, that he brings no proof for this Proposition, as being a Negative; it will have it, that he has "not only a manifest presumption of Law, seeing the Presumption is always reckoned, on the side of Liberty, but Notority and perpetual Custom.

'Tis pleasant to see the force of Prejudice, that is Learned Men should not discern an Affirmation here; that, Scotland was a Fee of the Romish See: But, it seems, Ecclesiastical Slavery Liberty, and Legal Liberty Slavery.

The Notority of Fact, and perpetual Custom, I will not stay in this place to examine; but undertake soon to shew them on the side of Superiority of the Crown of England, over that of Scotland. And must needs Smile to observe, that the infallible See should take a leap from the earliest times, to those of Henry II. and Edward I.

Sir T. C. assures us, "the Pope proves the matter, plainly by Deeds of Edward himself and Henry his Father; for when Alexander the Third, King of Scots, sent Auxiliary Forces to Henry III. in his War, with Simon de Montfort, he Demanded a Cauent, that they should

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" should not be looked on as sent on the
" count of any Subjection, or Right, which
" Henry did also testify by his Letters Patents,
" That he had received those Auxiliary Troops
" not as any Assistance, any way due to him
" but as a special Favour from his Neighbouring
" Prince.

" Certainly, says Sir T. C. this Argument
" the Pope's, does utterly destroy the Homage
" and he thinks Henry could not declare the
" Scotland owed him no Service, in more
" pres Terms.

Sir T. C. would not here consider his own
Objection; that this was only the Declaration
of the Prince, in relation to the Right of the
Crown, which he alone could not bind. He
fides,

I. This was at a time, when it must be
agreed what the King did, could be of no more
avail, than the Act of their King, in the Reign
of H. II. while in Prison; if it stood single
and was not according to what was his Duty
before.

II. The Service which the King of Scotland
owed the King of England, was by reason
his having the Crown of the Kingdom; the Power
of which the King of Scots was bound to main-
tain against Foreign Forces; but the King
of England being then divided, he might pos-
sibly think himself at liberty to change his side.

However, the King in those circumstances
might be glad to have his assistance upon
Terms.

III.
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III. The third, and a most Powerful Argument is, from a supposed qualification in the summons to the King of Scots, to attend at the Coronation of E. I. but as the Chancellour durst not have varied from the ancient Form, that there was any variation stands in need of better Authority than the affirmation of the Pope or any of their Historians. Especially, unless the Scots will be concluded by what their Historians say of the Succession of Robert the Third.

IV. The fourth Argument, thought to be still harder upon Edward, relates to the Demand, and Performance of Homage 6. E. I. When either the Pope, says, "the King of Scots appeared before Edward in Person, to perform the usual Homage, for Tyndal and Penrith, which are both in England; but declared he neither owed nor would perform any Homage, or Fealty for the Kingdom of Scotland; and that Edward himself did then agree to what was spoken.

This of Tyndal and Penrith was perfectly a new invention, and shews that they, who informed the Holy Father, knew nothing of the ancient History, or the Claims made by former Kings of Scotland, to Honours in England. But that the whole is mere Fiction, appears by the Record above, of Homage, then freely offered and done, without relation to any Lands; and of King Edward's saving his Right to have it expressly for the Kingdom, when he should think fit to Demand it.

The

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The next instance, Sir T. C. thinks is stronger still, "that Edward I. solicited a Marriage between the Heiress of the Crown of Scotland and his Son; and whereas if he had been Liege Lord of Scotland, the Wardship would have fallen to him; the Nobles of Scotland chose Guardians for her, till a dispensation could be obtained from the Pope; for Edward the Son, and she were in the second and third degrees of Consanguinity.

p. 389.

"And King Edward, by his Letters-Patent declared, that in case the Marriage should not be agreed on by the default of the Nobility, or otherwise, he should leave the Kingdom of Scotland Free, and Subject to no Man for ever; and if there happened to be Children by that Marriage, that he would leave the Kingdom in its ancient State and restore it, as he received it: That should retain the Name and Dignity of Kingdom as before, both in enjoying its own Laws, appointing Officers of State, holding of Parliaments, and deciding Causes within the Kingdom; and that none of the Inhabitants should be obliged to go out of the same for Judgment.

Upon this Sir T. C. says, "now none can call Parliaments, but those who have the Right of Majority; so that, if this provis, granted by Edward, do not put this Question, about the Marriage, out of all controversy, I know not what to say.

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IV. Every claim

But I shall shew that all this is built upon gross mistakes, if the chief part of it be not sheer Fiction.

I. Here is a supposal that the Act of E. I. whatever it was, bound the Right of the Crown, which Sir T. C. will not allow in the case of her King.

II. The permission of E. I. that the States of the Kingdom of Scotland, should act in the choice of Guardians to a Princess, at such a distance from the English Court, Argued no more than a Tenure and Complement to the fair Sex, in obliging her to Travel hither : And the Treating with the States of the Kingdom of Scotland, was no more a waiver of his Right of superiority, than his Treating in Parliament with his own Subjects, imply'd his ceasing to act as King of England.

III. Besides that King Edward's Declaration of a Charter, passed without the consent of an English Parliament, could not free Scotland from its Subjection to the Crown of England; it is not to be believed upon the Authorities of the Pope and Sir T. C. which I have so plainly prov'd by Record, that this King offered to leave Scotland free, tho' the Marriage should take effect; which had been a means to induce the Scots from agreeing to the Marriage, when the Offers which were really made, were to induce them to Consent.

IV. Even Sir T. C. urges nothing from the not claiming the right of disposing of the Heirels

Heiress of his feudal Tenant in Marriage; being, it seems, Conscious that the nearness of Relation obstructed the Marrying Her to his Son, without a Dispensation, which might not be obtained if opposed by the Scots.

V. By ^a *Fleta*, a Law-Book of great authority, writ in the time of E. I. we are told the Wardship and Marriage do not follow every Homage; and however, Seisin of the ^b Homage, was a Seisin of all the Incidents.

That of which Sir T. G. is most proud, argues great want of understanding, or something else, if that Marriage had taken effect; for is it not obvious that if there had been Issue, such Issue would have been King or Queen of Scotland; and the Parliaments there must have been held by them, or by Commissioners appointed by them: And therefore, tho' in the event, Scotland had retained its Seats, as before, in holding Parliaments; how could a Parliament holden under the King of Scots, who would at the same time have been King of England, infer any more than that as a King could not do Homage to himself; it would be suspended while the same Person was King of both Nations? but could the offer of this amount to the least shadow of a waiver of the antient Right?

VI. " The ^c Pope's sixth argument is, that this Margaret being Dead, and a Controversy

(a) *Fleta*, lib. 3. c. 16. *Ad omne Homagium non sequitur Custodia & Mariagium.* (b) vid. *Bevil's case Inf.* 6. (c) Sir T. G. p. 385.

" arising

" arising among the *Nobility*, about the Suc-
" ceſſion to the *Crown*, the greatest part were
" willing that the *King* of *England* ſhould be
" Arbitrator; and thereupon he came to the
" Borders with an Army, to ſupport thoſe of
" his own *Faction*; and the rest being called to-
" gether, were ſomewhat afraid, and not truſt-
" ing to the *King's* bare Word, that their Obe-
" dience ſhould be no ways prejudicial to the
" *Kingdom*, nor infer any *Servitude*, they would
" not come over the Borders into his Preſence,
" except he did first affiſſe them by his Let-
" ters Patent, that they were not required to
" do the fame as being there unto obliged, but
" out of a ſpecial Favour; and that the Liber-
" ties of the *Kingdom* ſhould ſuffer no preju-
" dice thereby. And theſe Letters Patent, ſays
" Sir T. C. were then produced before the
" Pope.

That this doughty Argument made up from ſuppoſed verbal *Declaratiōn*s, and a *Charter*, is meer *faktion*, appears by the *Record* above, which ſhows that *King Edward* at large, affer-
ted his *Superiority* and *direct Dominion*, before he proceeded to give Judgment; and the *States* of that *Kingdom* of *Scotland* met him to that end, in purſuance of the avowed Right of *Superiority* and *direct Dominion*; againſt which they could offer nothing, after taking full time to conſult their Principals, and how much ſo ever they might impoſe upon Holy Father's credulity; If *E. I.* had made any ſuch Decla-
ration, the *States* of *Scotland* need not have ta-
ken any time to invent Objections, againſt *King Edward's* Claim of Right.

And if they did make any upon first coming to E. I. they manifestly waived them, when they Concurred with him in adjudging the Crown to Balliol.

But the Pope says, " he had unjustly pronounced Sentence for Balliol ; that some Innovations were thereupon made by him contrary to the usual custom ; and all these things were extorted by violence and fear which may befall a constant Man.

That this was not so, and that it was with the consent of the States of Scotland, has appeared above.

Sir T. C. says the Sentence in favour of Balliol was given contrary to all Law and Equity. But as Sir T. C. does not oblige us with the Discovery wherein, this is to be placed among the rest of his unproved Assertions.

VII. The 7th. Argument is Founded upon the supposed immunity of the Scotch Church, in relation to the Holy See ; for which I am not concerned, and to the See of York, which, as will appear, is not the true Question.

And this is all that the Scotch, or rather French Coin could perwade Pope Boniface to endeavour to obtrude upon King Edward, upon pain of Damnation.

But as Sir T. C. tho' he seldom gives us any true Story, rightly says, " Edward being nothing afraid of the Pope's Threats, Swore by the Blood of God, for Sion's sake I will not hold my Peace, and for Jerusalem I will be at Rest (alluding to those Words, Sion and Jerusalem in the Pope's message) while there is Breath in my Nostrils ; but will Defend

p.388.vid.
Walling-
ham.

"my Right, which is known to all the World,
"to the utmost of my Power.

That E. I. did assert this Right to the last, has appeared above; but at that time, to shew that he would not act in an Affair of such concern to the People of England, without their Advice, he Summoned a Parliament for the declaring his Right; and Answered the Pope's Letter, as the Historian assures us,

*Ex deliberato apud Lin- From a deliberate
colniam convocato consi- Council called toge- Walsing-
lio. ther at Lincoln. ham, p. 18.*

So that his Answer was manifestly by the advice of Parliament.

The Pope as, has appeared above, threatned the King very hard, if he persisted in his supposed Ulrputation over St. Peter's Patrimony; yet neither Princes, nor People believed they ought to give up the right of the Crown, for any vain threat of Hell-Fire.

In answer to the Pope, the Parliament writ, as it were with greater Authority than their King; they said, "we know, that from the first Rot. claus.
"Institution of the Kingdom of England, the 29 E. I.
"Kings of That Kingdom, as well in the time Scimus
"of the Britons, as of the English, had the Su- quod, &c.
"perior and direct Dominion of the Kingdom of
"Scotland in Possession, or were Heads of Su- *Capitanei
"periority, and for right or justice to Scotland in Superiori-
"Successive times. tatis & re-
Etitudini.

Then, mentioning the Pope's impertinent Claim, as if Scotland were the Churches Fee, they add.

" But, in truth, the Kingdom of Scotland
 " has been feudal to the progenitors of our said
 " King, Kings of England, and to himself, from
 " of old ; and they tell the Pope very roundly,
 " they will not suffer the King to answer in this
 matter judicially before him, the so answering
 in which, and other temporal matters, would
 b manifestly tend to the Distortion of the Right
 of the Crown of the Kingdom.

The King, like an obedient Son, as if he
 were ready to answer, opens the merit of his
 Cause to the Pope ; & solemnly assures the Pope,
 " That his Ancestors and Predecessors Kings of
 " England, by a right of superiority and direct
 " Dominion, from the most ancient Times back-
 wards, were over the Kingdom of Scotland, and
 " its Kings, in Temporals and matters annexed
 " to them ; and received from those Kings for
 " the Kingdom of Scotland, and from what
 Peers of that Kingdom as would, Hugs Homage,
 and Oaths of Fidelity.

From this general assertion, he comes to
 particulars, and lays the Foundation of the Bri-
 tish Kingdoms in Bruce. That he gave part, since called
 Albany to Albaeact, who was Slain by Ham-
 ber King of the Huns, who flying from Bruce's
 Elder Son Locrine, was Drowned in the River
 which bears his Name ; and by the Death of
 Albaeact the Kingdom of Albany returned to Lo-
 crine.

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- (a) Quinimo regium Scotie progenitoribus dicti Regis ac
 Regibus Anglia, atq; sibi feudale exitit ab antiquo.
 (b) Cederent manifeste in exhereditationem juris corona
 regni Angliae. (c) Lit. Mis. ad Cur. Rom. Super jure Regi
 competente in regno Scotie. Rot. Clav. 29 E. I. m. 10.

C H A P.

C H A P. X.

*Short Observations of the History of Brute,
and the Writers of the British Affairs;
Whence Britany and Albany had their
Names. And of the British Monarchy
under the first Christian King.*

SIR Thomas having, as I observed above, Sir T. C. admitted, that if the Story of Brute and his Sons was true, by the falling of Scotland sup. c. 6. to the eldest, who was King of Britain, the Fee was consolidated. 'Tis much he should wonder how then Superiority could continue; since it is obvious, that, then no King could have Dominion in Scotland, but from or under the possessors of the Crown, to which that was Consolidated or Re-united.

But Sir Thomas, who would have all their conjectures taken upon trust, rejects all our ancient Authorities of the Story of Brute and very great Men among us too easily give up the British Histories. The old Britons, as they upon all occasion evidenced invincible Spirits, have been no less remarkable for Sincerity, and love of Truth; and therefore 'tis very unequal to tax all their ancient Monuments with Forgery, which are not Supported with the Testimony of Foreign Authors, or their Enemies the Saxons.

The chief Reason which has made lying Polydore, and others, derogate from their Credit, has been their obstinate opposing the Romish

Superstitions, against which there were numbers of Martyrs among them, soon after the coming of the Romish Apostle, Austin the Monk.

Bede, a true Bigot for the See of Rome; for his placing Salvation in a right observing the time of Easter, and other such weighty matters, has been received as an Oracle, while all the *Culdees*, * or Preachers among the Caledonian Britons, and grave Men without Guile in other parts, have been despised. Yet whoever examines Bede, and other Saxon Writers, will find, that they pass over most things but what relate to that Cause, or Kingdom for which they Write.

Thus Bede, being of the Northumbrian Kingdom, gives very little account of any other, except of the *Cantian*, where their St. Augustine was first received: And small care is taken to preserve Memorials of the generality of the actions of the *Danish Kings*; but of their Successions and Laws before their *Canute* obtained the British Monarchy, there is nothing to be found.

Bishop of W's Pref. A learned Critic in his Country Tongue assures us, that the *Britons have this to say*, which few can say elsewhere, That they still keep the same Language which was first Spoken in the Country.

Which being so, 'tis not to be thought that they should want as certain Monuments of Antiquity, as we have by old Inscriptions, of the Times when the *Romans Governed* here.

In the Names of Persons and Places, a Man skilful in the Language cannot be deceived. Therefore I cannot but give credit to Mr. H. Lbnyd, who says,

Altho'

" Altho' Cæsar call the Britains *durix̄boras*
 " that is, Born in the same Country where they
 " Dwell. And *Diodorus Siculus* sayeth they were
 " from the Beginning; yet do I belieue that
 " Brutus came into Britain, with his Train of
 " Trojans, and there took upon him the Govern-
 " ment of the antient Inhabitants, and of his
 " own Men; and therefore were called *Bri-*
tains; for our Country Men unto this Day
 " do call a *Britaine Britum*, which Word com-
 " eth not from the antient Name of the Island
 " *Prydane*, but from *Brutus* the King. And all
 " Historians call the *Britains* in the plural Num-
 " ber *Britanni*, and *Brython*, which Words are
 " derived from the Name *Brutus*; for in de-
 " rivation of Words, our Country Men often
 " turn v into y.

'Tis no less to be believed that the Country which has since obtained the Name of *Scotland*, was called *Albany*, from their King *Albanact*, which Sir *George Macbenzie* agrees. Indeed their excellent Poet *Buchanan*, contends that "b *Albion* or *Albium*, the Name of the *Island* "as coming from *White*, has stuck to *Scotland*, "as to its Natural Soil.

But how can it be imagin'd that the Name of the *Island* of *Britain*, shou'd come to have been appropriated to *Scotland*?

To confute this wild imagination Mr. *Lbnyd* rightly observes, that this *Island* was known

(a) *Defence of the Antiquity*, p. 5. (b) *Buchanan hist.*
 f. 3. b. 4. *Nomen insula ab albo Duorum, sive Albion sive*
Albinum sit adhuc in Scotia velut Naturale solo persi-
naciter subaret.

" to Aristotle by the Name of *Albion*, before
" the Name could have been taken from the
" Roman Language, and even before the Scotch
" Fable of King *Fergus* the first. For the truth
of the Story of *Brute*, I might refer to sev-
eral ancient Ms. in the Cotton Library, and to
the Name which the old Romans gave that
part of *England*, of which *London* was the *Me-
tropolis*; this in the *Confessor's Law*, is said to
have been Built and Governed like the anci-
ent *Troy*; as the Inhabitants of those parts
were *Trinobantes*.

Of the antiquity of London. I cannot here pass by the inconclusiveness
of the late Bishop of *Worster's* argument, as if
London was no City in *Julius Cæsar's* time, not
being mentioned among the *Civitates*, which
sent Embassadors to *Cæsar*; that Great and
Learned Man, Bishop *Stillingfleet*, not having
observ'd that *Cæsar* uses the Word *Civitas*, in
a more comprehensive Sense, for all the com-
munity under a distinct King or other Go-
vernour.

Nennius, who, as a learned *Bishop* observes
from that Author himself, was employed to
Write a History of our Nation, speaks of a
Tradition, as if the Name of *Britain* came
from one *Brutto*; but that it came from one *Brute*.
Nennius affirmed he had seen express Autho-
rities: * In *Annalibus Romanorum* Sic Scriptum
est, 'tis so writ in the *Annals of the Romans*.

These Annals might have been composed
by some of their Learned Men that were here,
of the antiquity of which, *Nennius* might well
be satisfied. That no such are now to be found,
no Man can take to be any objection, consider-
ing

* *Nennius*
ed. per.
Doctorem
Gale. f. 98.

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ing the common Fate of Writings and Records.

The Register of Mailros has a very remarkable passage, which shews the Story of Brute Mailros de to have been received without any hesitation in the Year 1241, 25 H. III, occurrences of that time being mentioned, 'tis added,

Walenses qui & reliquie Britonum qui a labus Brutus qui primus eorum Princeps erat, Principem super se de gente sua haberunt, sub quo & per quoniam causas terminabant, modo coguntur Londonias properare ibidem ad arbitrium Anglorum determinare.

The Welsh, who also are the remains of the Britons; who from the Days of Brute, who was their Prince, had over them a Prince of their own Nation; under and by whom they ended their Causes; now are compelled to hasten to London, there to determine them, at the will and pleasure of the English.

Long before this Simon of Durham speaking of S. Dun. f. Action between Offa King of the West-sax-^{181. He be-} m and the Britons, says, "the Off-spring of ^{son his} Brute had an incurable Blow.^{reign An. 643.}

I cannot here omit what Nennius says of King Lucius, with farther authority concerning the British Monarchy in the second Century after our Saviour.

Anno. Incarn. CLXIV.
Lucius Britannicus Rex
cum universis Regulis totius Britanniae, Baptis-

In the Year of the Incarnation 164, Lucius the Britanick King, with all the little or

*mum Suscepserunt, Missione ab Imperatori-
bus Romanorum, & a Pa-
pili Romano Euariſto.*

under Kings of all Bri-
tany; an Embaffy hav-
ing been ſent from the
RomanEmperours, and
from Pope Euariſt, re-
cieved Baptiſm.

This Pope Euariſt, as an old Briton calls him, was Pope Eleutherius, who might take this opportunity of Writing to King Lucius about Religion; when Antoninus and Lucius Verus, who then were Emperours, ſent an Embaffy about Civil Matters.

The different accounts of the time when King Lucius, by the advice of his great Council, writ to the Pope, to be instructed in Laws fit to Govern this Empire; upon which he recieveth the Answer transmitted down to us, being according to different computations, can be of no more weight, than ſeveral other trivial Objections, which I need not stand here to remove.

The Pope in that Letter, which could be no Forgery, Writes back.

*vid. Loges Ed. Conf. G. " Ye have the New and Old Testament
out of them, through God's Grace, by the
Prid In- advice of the Realm, and by the same through
erod.p 282. " God's Permission, Rule your Kingdom of Bri-
" tain, for in that Kingdom you are God's Vic-
" gerens.*

This, which was before the Pope claimed the Goverment as Christ's Vicar, shews manifestly that King Lucius was God's Vicegerent, throughout the Kingdom of Britain.

In after-times, when the authority of the Pope was received as universal, this was improved into a concession from him; that the Monarchy should be entire as far as the limits of the British Kingdom then reached.

This was before ever the *Picti* had got any considerable Footing here: For *Severus*, who Prid's *In-*
Built the famous *Picti Wall*, to stop their *introduction*
Incursions, came not hither till the Year, 208. *An. 208.*
nor as has appeared were they Formidable to
the *Britons* before the Year 382.

Temp Maximi.

But what were in the *Confessor's* time, held to have been the Bounds of the *British Empire*.
from the time of the Pope's Letter, till within
the *Confessor's Reign*, and remaining to 4 W. I.
will appear by this passage in the account of
the *Confessor's Laws*, confirmed 4 W. I.

* *Universa vero terra & tota, & insulae omnes usq; Norwegiam & Daciam, pertinent ad coronam regni ejus, & sunt de appendicis & dignitatibus Regis, & una Monarcha est & Unum regnum Britannia. Adodo autem vocatur Anglorum; Tales enim metas & fines, ut supradictae sunt, constituit & imposuit corona Regni Dominus Eleutherius Papa, qui Anno 67. post passionem Christi, primo destinavit coronam Benedictam Bri-*

But the Universal *. Lamb-
and whole Land, and Arch. f.
all the Isles, as far as 142. De
Norway and Denmark, &c & de
appertain to the Crown jure & ap-
of his Kingdom, and pendicijs
are of the Appendages *corona reg-
ni Britanniae.*
King. And it is one
Monarchy and one
Kingdom of Britain;
but now it is called of
the English. For such
Bounds and Limits,
aforesaid, Pope Eleu-
therius Constituted and
put upon the Crown of
the Kingdom. Who in
tania,

*tania, & Christianita-
tis Deo inspirante Lucio
Regi Britonum.*

the Year 167. after
Christ's Passion, first
sent the Blessed Crown
of Britain, and thro'
God's Inspiration Chris-
tianity to *Lucius King*
of the *Britons*.

*Vid. Dod-
wellum de
nupero
Schismate
Anglicano.*

Thus early the Crown of Britain, comprehending all the Land and the Isles as far as Norway and Denmark, among the rest the Orcades, where the *Picts* first Setled, was enjoyed as was thought of Divine right by a Sole Monarch; and as he was the first Monarch who promoted Christianity throughout the Island, in this matter he was God's Vicar to the Christians within this Island, and the head of Union, in as good a Sense as a Learned Enthusiast and others contend, that the Bishops of Jerusalem first were, and afterwards those of Rome.

C H A P.

(s) *Vid.*
and K.
d. Litt.
in reg.

C H A P. XI.

The 1st. of King Arthur, and the elder Gildas's Testimony of a British Monarchy, soon after King Arthur's time.

Having been put into my way by an English Parliament, in comparison with which we are but of yesterday and know nothing; I might be tempted to go without my Guide, to make up that gap in the Evidence of the British Sovereignty, from Loctrine (under whom the Island was re-united) to King Arthur, which is left by E. I. and his Council, as not necessary to illustrate his Right.

Therefore I cheerfully follow my clue to that glorious King Arthur, who wanted not the Hand of our ^a second Virgil, to add any thing of Fiction to his true Character.

Arturus R. Britonum famosissimus, Scotiam sibi subdilem subjecit, & penitentiam gentem delevit; & postea quendam nomine Arguselum in Regem Scotiae praecepit, & Arturus apud Civ. Legionum fes-

Arthur the most famous King of the Britains, Subdued Scotland, which Rebelled against him; and almost destroyed the whole Nation; and afterwards set over them one

(a) Vid. Sir Ric. Blackmore's inimitable Poems of Prince and King Arthur. (b) Rot Claus. 29. E. I. m. 10. d. Litteræ mis. ad Cur. Rom. super jure Regni competence in regno Scotie,

tum faceret celeberrimum
interficerunt ibidem om-
nes Reges sibi Sub-
jecti, inter quos Anguse-
lus Rex Scotiae Servit-

^{*Welsches-}
tum pro regno Scotiae ex-
hibens debitum gladium
Regis Arturi detulit
ante ipsum, & Successivè
omnes Reges Scotiae om-
nibus Regibus Britonum
futro Subjecti.

Angusel for King of Scotland, and when after that the said King Arthur held a Feast at the City of * the Legionis, in British Caerleon, all the Kings who were Subject to him, were present : Among whom *Angusel King of Scotland*, performing the Service which he owed for the Kingdom of Scotland, carried King Arthur's Sword before him ; and all the Kings of Scotland successively were Subjects to all the Kings of the Britons.

Sir Thomas Craig, indeed denies that there ever was any such British King as *Artur*, being supported chiefly by the authority of Newbergensis, who was not only a despiser of the British Antiquities, which took from the Honour of the Saxons ; but writ after R. I. had made a sort of a Release to the King of Scots ; which I shall shew was not of such importance as it has been taken to be ; and if it were, could have no more effect than his Brother's Charter, intending to Subject his Crown to the Pope.

To

To *Newbergensis*, Sir T. C. joyns lying *Polydore*, whose Ignorance, or else Malice, Mr. H. Lhuyd handsomly exposes. Sir Thomas having such mighty Champions on his side, as our *Newbergensis* and the Italian *Polydors*; thinks upon this occasion he may reject, not only their own *Scotish History*, but all the Monuments of King Arthur in England, and those in Scotland, which he confesses to be probable: yet he fancies he Argues to Demonstration against King Arthur's Story. 1. From the Silence of *Gildas*, who he says was Born in the Year 501; from whence he concludes him to have been 3 Years older than Arthur is represented; of *Bede*, who lived but 160 Years after him; and of the Roman and Saxon Authors.

2. From the Discredit *Jeffery of Monmouth*, (who is thought to have been the most particular in his Story) has lain under.

I. As to the Roman Authors, their Silence need not be accounted for, concerning matters in another World, with which they had then no Communication: As to *Bede* and other Saxon Writers, enough has been said. But it lies upon me to remove the wonderful Negative Answer from the silence of *Gildas*. He appears to have been a Preacher of those times; and applies no more of the British History, than he thinks proper on his Text, to lay before his Country Men, the dissolute State into which they were Sunk. And tho' the Glory of King Arthur had been a proper Topick to excite them to a generous Emulation; Yet, as *Gildas* seems wholly intent upon Religion; Military Virtue was no part of his Subject:

And yet he gives no obscure hint, that they had chosen such Men as King Arthur, to carry them to Arms ; from which he would drive them into Cliffs.

Having mentioned the Luxury which increased, with their great plenty, when they rested from the Polish and Scotch Rovers ; he says,

Gildas ed.
per D. G.
Dec. Ebor.

*Ungebantur Reges &
non per Deum; sed qui ea-
teris crudeliores entarent:
Et paulo post, ab undicti-
bus, non pro veri ex-
aminacione trucidabantur,
alijs electis trucioribus. Si-
quis vero eorum mitior,
& veritate aliquatenus
proprior videretur, in
bunc quasi Subversorem
Britanniae omnium odia
& tela torquebantur,
sine respectu.*

Kings were Anointed not by God ; but they who were above all others in Cruelty : And soon after, they were Slain by their Anointers, without examining into the truth of what was alledged against them, other more cruel being chosen. But if any of them in truth might seem more fit, against him as a Subverter of Britain, the hatreds and darts of all were thrown, without respect.

I will not contend with any Man, who may Criticize upon the Word *Propior*, and hold that it signifies nearer to the Throne in right of Blood ; but whether they then confin'd their choice to the Royal Stock or no ; the chief Ground of their Elections, was to have one to Head them in the Wars. And whatever right of Proximity or Merit in other respects, ought in

In Gildas's Opinion, to have directed their choice; if they were not rough Military Men, 'tis plain they thought them likely to subvert or weaken the British Monarchy.

After this, he gives account of various Successes of War, between them and the Saxons, to the time of his writing. But Sir Thomas and his admirers have over-looked his demonstration of a British Monarchy, in his declamatory epistle, where, having said,

*Rages habet Britannia,
Ad Tyrannos, &c.* *Britain has Kings, but
Tyrants.*

He applies himself to the then Monarch of the whole Island,

*Quid tu, insularis
Draco ! Multorum Ty-
rannorum depulsor tam
regno quam etiam vita ;
supradictorum novissime in
stylo, in malo major; mul-
tis potentia simulq; pro-
fusior in peccato, robuste
armis, sed animæ fortior
excidijs, Maglocune !
in tam vetusto Scelerum
strumento veluti madi-
bus vino de Sodomitica
vitis espresso Stolido Vo-
laturis ! Quare tantas
peccaminum Regie cerci-
ti sponte, ut ita dicamus,
ineluctabiles celorum
Montium innecifis Moles ?*

Why, thou Dragon of the Island ! the expeller of many Tyrants, as well from Kingdom as from Life ; the last of the abovementioned in Stile, the first in Wickedness ; greater than many in power, more profuse in Sin ; robust in Arms, but Stronger or more Daring in those things which destroy the Soul, O Maglocun ! dost thou foolishly wallow in such inveterate Ink of Vice, as it were Drunk with Wine, I 2 *Quid*

*Quid te non et Regum lom-
nium Regi quem enetis
Britanniae Dueibus regno
fecit, quam Status linear-
mente editorem exhibes
easteris Adeliorum sed vice
versa, Deteriorum ? Ecce.*

squeez'd from the Sede-
mialek Vine ? why dost
thou voluntarily fasten
about thy Royal Neck
so many, as I may say,
Incluctable heaps of
high Mountains of Sin ?
Why dost thou not
shew thy self to that
King of Kings, who
has made thee higher
than all the Leaders
of Britain, as well in
the pomp of State, better
than the rest, but on
the contrary worse?

Thus *Gildas*, whom Sir *Thomas* receives, gives
so manifest proof of there being one *Monarch*,
over all the *Kings* of this *Island* of *Britain*, that
there's no need of any Comment upon *Gil-
das* his Text, other than to observe, that this
Maglocun was *Malgo*, who, as *R. de Diceto*,
Dean of *London* in King *In's* time, is
thus warranted to say, obtained the whole
Island; and yet neither *Bede* nor the *Saxon*
Chronicle, or any of the *Saxon* Writers of that
time, that have occurred to me, mention any
thing of him. But Sir *Thomas* admits that
there was such a *British King*. His Argument,
upon admitting what *Holinghhead* says of him,
is something diverting. Our Historian says,
Malgo gave *Lorbian*, a part of what is now cal-
led *Scotland*, to *Erbfred*, the *English Saxon*:
what then, says Sir *Thomas*, " it cannot be con-

*R. de D.
f. 553. to-
tam Insu-
lam obti-
nuit.*

" cluded

" eluded from thence, that the King of Scots
" payd Homage to Malgo; nay, the contrary
" is to be inferred from the feudal Law, viz.
" That if Malgo had any superiority over Scot-
" land, he left it by this very act; In mak-
" ing the condition of this vassal, worse than
" It was.

All this, and more of the like kind, is Buile
upon encountering his own shadow, and his
Country Stories; As if before Malgo's time
the Scots were possessed of the Government
over that part which he owns to have been
Pictland at that time. But if, as authorities
evince, *Pictland* was in the Hands of the *Saxons*
at that time, upon expelling or subduing the
Picts; without cramping the Question with No-
tions of the feudal Law, Lothian which was
called *Pictland*, by way of emittance, was ei-
ther part of the British Kingdom, or granted
out to hold of the British Crown.

But farther to remove all possible colour
from this objection, upon his Fancy about the *Vid. Prid-*
feudal Law; I must observe that Malgo is not *Introd. p.*
held to have Reigned before the Year 552; *Cron. 290,* *sax. An. 547*
and the *Northumbrian Kingdom* began before,
under *Ida*: But a King of those Dominions, of
which *Pictland* was part, received *Investiture*
from *Malgo* the *British Monarch*. Which shews
the *Northumbrians* to have been then Feuda-
tory to the *British Monarch*; and all the *Picts* *Vid. Inf. o f*
and *Scots* there, to have been Subjects of that *Ecgfrid.*
fudal Kingdom.

C H A P. XII.

The second, of King Arthur. Jeffery of Monmouth's Credit, Supported by History and Records.

To proceed in removing Objections against what has been from Age to Age believed of King *Arthur*: as the most which has been early Published of him, in a Language commonly understood, was by *Jeffery of Monmouth*, I may be bore with, in laying some Considerations together, for the supporting *Jeffery's Credit*. Two very great Men have Objected against what has been found in the *Authentick Copies of Sigeber of Gembleurs*, who Dyed above 20 Years before *Jeffery* writ; as if many things out of *Jeffery* are thrust into *Sigeber*; particularly the Story of *Brutus*, instanced in by one of them, which, as I conceive arose upon the mistaken Supposition, that *Jeffery* was the first, who had mentioned those matters: Nor can I apprehend any weight in the farther Strength to this Objection; that *Jeffery* himself, saith, he Translated the *British History* into *Latin*; for if there were any other Translation, tho' not so well done, or but of part; or if *Sigeber* understood the original *British Tongue*, or had but met with *Nennius*, and others who mention *Brute* and other particulars of the *British Story*; any of which were enough, and one of them could not but be true; it then follows that

*Vid. B. of
W's. Pref.
to Hist.ac.
counts.*

Sige-

Sigebert, who Died 20 Years before *Jeffery* writ, is a good Testimony on his side. If he be not, at least our *Huntingdon* is, who not only agrees with *Jeffery* in substance, but affirmed^a in Traveling to *Rome* he had met with the *British MS.* which he followed. This Mr. *Stow* observed that he had seen mentioned in a *MS.* of *Huntingdon*, where *Jeffery* of *Monmouth* was not Named. That ^b *British MS.* *Jeffery* declares that he had turned into Latin, at the request of the *Archdeacon of Oxford*; and this makes it much more probable that, wherein *Sigebert* agrees exactly with the Translation, he had it from the Original, before it was brought over, or that he had seen the same matter else where; than that any thing should be inserted in *Sigebert's Chronicle*, to justify a Translation of what must needs have been a very antient *British Manuscript*. But for farther support of *Jeffery* in this and other matters, I refer the Reader to the Learned ^c Sir *John Price*, who assures us, that the *Britons* have their Laws published above 600 Years before his time, and several Authors in their own Language; some who writ by way of *Chronicle*, some at large.

(a) *Bib. Cor. Vespasian A. 23. In meo vero Codice Huntingtoniano haec sunt in Epistola ad Warinum Britonem. Hoc tamen anno cum Romam proficisci erat apud Beccensem Abbatiam scripta eora predictor. stupens inveni, &c.* Non nominato *Galfido*. (b) *Galf. Mon. in prologo. Optulit Walterus Oxenfordensis Arcibabiaconus, &c. quendam Britannici sermonis, lib. verutissimum qui a Bruto primo R. Britann. ad Cadualadrum, &c.* (c) *Priscellus de Scrip. Brit.*

As to the Story of *Brute*, tho' a learned Bishop thinks it was foisted into *Sigebert*, after Jeffery's Translation of the British MS. his Lordship might have observed that it is in *Nennius*, who in the ancientest MS. of him in the Cotton Library, is called *Gildas*.

And the acts of King *Arthur*, our present Subject, he might have found in a *Gildas*, to be seen in that Library; which considering the Antiquity of the Author, and how near he is taken to be to the time when the learned Bishop observes that *Nennius* flourished, may not improbably be another work of the same Author.

The *Gildas* I here refer to, is by the judicious Person, who put a Title to the MS. taken to have flourished in the Year 860. This *Gildas* having mentioned *Arthur's* Summoning his Peers at *Christmas* to *York*, says

* Vid Bib.
Cot. Jul.
D. Hist.
Britonum
latine car-
mine hero-
ico per Gyl-
ham, claru-
rit An. 860.

More suo diadematè sumpto
Diversi generis, data ferula, dona manipulis
Larga satis tribuit —

He, as was his custom, wearing his Crown, gave Entertainments, and distributed large Gifts to his Soldiers.

This, as I now take it, not having present recourse to the Book, was at *York*.

He held another Feast at *Whitfontside*; I did not observe notice of any Feast at *Easter* that Year, being, 'tis likely, prevented by War. But our Kings wearing their Crowns, and holding Courts at three times of the Year, seems to owe its institution to him.

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Gildas.

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Quem a
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That Court at *Whitsontide*, was held at *York* ; there called, if I Transcribed it right, *Eboraz*. Notice is taken by *Gildas* of his hearing Causes, *Siquid h.* and doing justice there ; the *Kings* and *Dukes*, *tigisum*, &c. or *Earls*, who were Subject to him, being called together ; and *Gildas* says, there were eighteen *Kings* there. It seems, indeed, that the King of that part where the *Scots* have since Setled, was not there. That People having endeavoured to cast off that Dominion which he had over them ; of which they immediately repented, upon his coming among them. The *Bish-*
ops, *Clergy* and *whole Province*, or Inhabitants of that part, submitted themselves, and all that they had to his Pleasure, as appears by this passage, which any Man may find in that *Gildas*.

— *Scotosq; puit, cui turba fidelis
Pontificum, Clerisq; sacro velamine tectis
Nuda pedes, puro portans abscondita in auro
Corpora Sanctorum supplex humilisq; furenti
Obviat & flexis genibus, lachrymisq; profusis,
Sic ait, & *juvenum fortissime, maxima Regum
Quem virtus invicta, &c.**

*Subiectum rabi nostra, sicut Provincia praesens,
Et ius te vincat pictae qua casera vincit,*

In this, and a great deal more of the Actions of King *Arthur*, this *Gildas* seems to have been closely followed in Prose, in an ancient MS. in the *Cotton Library*, ascribed to one *Nebonius of Glaston*,

If still Men will suspect *Gildas* the Poet, let them go back to the *Gildas*, more generally known by the Name of *Nennius* ; he speaking

of the Check given the *Saxons*, when they were overrunning *Britain*, says, "At that time the
 "Saxons prevailed and encreased not a little in
 "Britain, &c. *Arthur* Fought against them in
 "those Days; to wit * the *Saxons* with the

* *Saxones* Kings of the *Britons*; but he was Head or Leader in the Wars, or Commander in Chief.
*Regi-
bus Brito-
num sed ipse
Dux erat
Bellorum
& in omni-
bus vitor
exitit.*
 Since there were Kings of the *Britons* under him, can any Man doubt but he was first King? *Nennius* mentions twelve great Battles which he Fought, one of which appears to have been within part of the Now Kingdom of *Scotland*.

And 'tis observable, that *Nennius* mentions a piece of the Cross, which *Artbur* had brought from *Jerusalem*. This, *Nennius* said, was to his time kept in great veneration at *Wendale*, a *Medieval* Town in the Provice of *Lodony*, then under *In Prov.* the jurisdiction of the *Bishop* of *St. Andrew* *Lodonefie*. in *Scotland*; six Miles West of that anciently, or from of Old, Noble and eximious Monastery of *Malrost*.

To this I may add, that, as is confessed by Sir Thomas Craig, the Memory of King *Artbur*, is to this Day among the *Scots* in *Artbur's* Seat near *Edinburgh*, and his Vault not far from *Sterling*; as it is in *England* by his Tomb, found in the Reign of *Richard I.* with this Inscription.

Sir T. C.
p. 119.

*Hic jacet Arthurus, Rex quondam, Rexq;
futurus.*

The

(a) Rep.
Glast
before

The latter part plainly relates to that Renown with which 'twas believed he would ever live a King in Story. But if a Charter of his as King, was extant in the Reign of H. II. this one would think, might be enough to Silence this Dispute.

There are several *Inspeccions* to be seen in the Tower of a Charter of H. II.* which confirms Grants made of Old, to the Church of Glastonbury, in which are these Words.

"Whatever had been Granted by my Pre-
"decessors, *William I.* *William II.* and *Henry my*
"Grand Father, and also *St. Edgar*, the Father
"of *St. Edward*, from *Edward* and his Fa-
"ther, and *Ethelred* his Grand-Father, *Bri-
"tis wales*, *Kennibwin*, *Baldred*, *Ino*, *the *Pamona*
"Arthur, *Cnudred*, and many other *Christian*
"Kings; and also from *Kenowall*, a certain Pa-
"King; all whose Privileges and Charters
"I caused diligently to be sought for, and
"presented before me and read, and they are
"confirmed to the Church, which of old was
"called the Mother of the Salmon."

*Inchfrea
Arthur.*

And what is yet a greater Authority, with those who contend for the Honour of descending from a People Conquered by *William I.* *Girvus of Tilbury*, by a misconstruction of whose Words 'Domesday-Book' it self is to be set aside, seems in a *Treasy* of his in the *Cotton Library*, to have Transcribed the *Gildas*, some of whose

(a) Rot. Cart. 5 E. 1. m. 7. n. 19. pro Ab. & Cenw. Glaston. C. 7 E. 9. m. 13. n. 29. (b) viz. the second before the rephred Conquest.

Verles I have cited, in his account of what Arthur did in relation to the parts now called Scotland; and says, he made *Angus* King of the Scots, *Urian* of those of *Murray*, and *Loth* Con-
sul, or Earl of *Lodeny*, with the adjacent Pro-
vinces.

Agreeing with this *Nicolas*, of *Gloster*, who cer-
tainly was of the time with which he ended his
History, speaking of King Arthur's coming to
York, says

Bib. Cet.

Catig. A.B.

Chrom. Nic.

Gloc. ab. in.

itio mun.

pol. prefec.

out & eccl.

di ad An.

828.

Convocato Clero, &c. ss.
pulo Piratum Capella-
num suum sedi illi Metropo-
litio mun. pol. prefec. out & eccl.
euram renovandar. in-
funnis viros ac mulieres el-
vitatis indigenas per Sax-
ones in regiones longinquas
expulsi. data pax, honoribus
restituta. Inter quos in-
venit fuerunt 3 Fratres,
regali præstria orti, Loth,
*viz. usq; *Urianus* &*
**Angusius*, qui antequam*
Saxones prævaluerint to-
tius terra illius ab Alba-
mia usq; Humberum Princi-
patum tenebant.

The Clergy and Peo-
ple being called toge-
ther, he set his Chap-
lain *Piram*, over that
Metropolitical See: To
whom he enjoyned the
care of renewing the
Churches. Men and
Women Inhabitants of
the City, driven out
by the *Saxons* into re-
mote Regions, he re-
stored to their Honours,
giving them Peace.

Among whom there
were found three Bro-
thers of a Royal Stock,
viz. *Loth*, *Urian* and
Angusius; who before
that the *Saxons* pre-
vailed, held the Princi-
pality of all that Land
from *Albany*, as far as
the *Humber*.

Among

Among these, *Nicholas of Gloster* shews, that Arthur made the distribution of the Parts, within the present Kingdom of Scotland, mentioned by *Gildas the Poet*, and *Gervase of Tilbury*; but as there is not the least Word, that the Kingdom was then *Scottish*, so their Kings or Rulers appointed by Arthur were of some other Royal Family, between the then Bounds of Albany, and the River Humber.

He shews that *Lodeny* was within those Bounds.

*Loth autem qui temp.
Aurelii sororum illius duc-
ret, ex qua Wulwanum
& Modredum generat,
ad Consulatum Lodenense.
cateraruntq; qua si perti-
nebant, remisit.*

But *Loth*, who in the time of *Aurelius* had Marryed his Sister, of whom he Begot * *Wul-
wan* and *Modred*; he <sup>* Vid: Ma-
nus. do-
sed. no-
tum. Ar-</sup> sent back to the Go-
vernment of *Lodeny* and *shuri*.
the rest of the Regions
which belonged to it.

This account might be confirmed by other Authorities; nor can it be any great question, but *Lodeny* had its Name from this *Loth*.

C H A P. XIII.

*The third, of King Arthur. Of Writers
who Lived in, and near his time. And
the reputation given in the Confessor's
Law, so what had been writ of him.*

*Uffer de Brit. eccl. Antiq. f. 272.
Vid. Pit. scium de script. Angl. p. 93. 96. 103.* **T**O remove all doubts of the substance of King Arthur's Story, I may observe that the Scotch Writers, of chief Authority, *Fordon, Major, and even Boethius and Buchanan*, agree, that King Arthur Dyed in the Year 542. But *Congell*, who flourished in the Year 530, *Telsine* in 540, *Adelchin of Avelon* in 560, *Elvoduge* the Honest in 590, who all writ of the British History, could not but be well informed of the Actions of Arthur's Life; and *Samuel Benlan* of those times, writ of his Actions among the Scots.

Mss. nurper penes præ honerab. Com. de Mactes- feld. In the Margin of *Harding*, who writ a large History of Britain in Verse, in the Reign of H. VI. I find mention of a *Polychronicon*, writ by St. Columbe, and an other Chronicle writ by Bishop. *Colman.*

Sir T. C. p. 34. But Sir Thomas Craig's censure, as if all to be found in the English History, before what he calls the Conquest, is vain and trifling, and almost all of it uncertain; is so far from any colour of Justice, that even the Story of King Arthur above 500 Years before his *Aera*, was not only capable of good proof, but was so attested before the coming of W. L. that it could not then

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then reasonably be doubted; and ought not to be questioned now, if it was believed then.

That this was so, may fully appear from the Confessor's Law, which Sir Thomas Craig unwarily received

That Law shews that Arthur was not only King of all Britain, but laid a firm Foundation for securing the Peace of this Monarchy, the Dignity of the Crown, and the Privileges and Properties of the Subjects.

The Confessor's Law, Title Greve, mentioning the Folcmote, which a strong prejudice against the Rights of the Commons, has not suffered Men to understand; I may be permitted the rather to enlarge upon it, since the first settled Provision about it was, of King Arthur's Institution.

*Folcmote, i. e. vocatio
& congregatio populorum
& gentium omnium;
quia ibi convenire debent
universi qui sub protec-
tione & pace Domini Re-
gis degunt, & consistunt.*

The Folcmote, that is,
the calling together, *Leges Edi-*
and Assembly of all Peo. Conf. c.
ple and Nations; because *33. De-*
there all who live and Greve.
subsist under the Protec-
tion, and Peace of our
Lord the King, ought
to convene.

This Assembly appears to take in the People of more Nations than one; therefore for certain must have been more than a County Court, with is yet more evident from their business, and the time of the meeting.

Et ibi providere debent indemnitatibus corona regni hujus per commune consilium, & ibi providendum est ad insolentiam Malafactorum reprimendam ad utilitatem regni. Statutum est animi quod ibi debent populi omnes semei in anno soli, conuenire, soli, in capite Kal. Maij.

And there they ought to provide for the indemnity of the Crown of this Kingdom, by Common Council; and there Provision is to be made to suppress the Insolence of Malefactors, for the profit of the Kingdom. For a Law has been made, requiring all people to meet there in Truth once a year, that is to say, on the first of the Kalends of May.

At this general Assembly, all People were to meet in a stated Council; where they were to provide for the Indemnity of the Crown, and other public concerns of the Kingdom.

But as Oaths were ever thought the strongest Engagements to Duty, they were,

Ex sa fide & sacramento non fracto ibi in unum & simul confederare, sicut conjurati fratres ad defendendum regnum contra alienigenas, & contra inimicos, unum Dominum suo Rege, & terras & honores illius omni cum fidelitate cum servare; & quod illi ut

To Confederate themselves together, with plighting Faith, and an inviolable Oath, as Sworn Brethren, to Defend the Kingdom against Strangers and Enemies, together with their Lord the King; and with him to preserve his Lands and Honours, with domi-

*domino suo Regi extra
extra regnum universum
Britanniae fideles esse
volunt. Ita debent facere
omnes Proceros regni, &
Milites, & liberti homini-
us universi totius regni
Britanniae facere debent
in pleno Polcmote fidelita-
tum Duo Regi ut predictis
uram Episcopis Regni.*

all Fidelity; and that they will be Faithful to him within and without the whole Kingdom of Britain: So to do ought all the Peers of the Kingdom, and Knights and all Freemen of the whole Kingdom of Britain. They ought, in full Polcmote, as is aforesaid, to Swear Allegiance to their Lord the King, before the Bishops of the Realm.

If it should be doubtful, whether Kings in any part of the Land, or Island of Britain, could come within that part, which relates to the Peers of the Realm; what follows puts it beyond Controversy:

*Hanc legem inventit
Arturus, aquondam fu-
it inclytissimus Rex Bri-
tonum; & ibi consolidavit
& confederavit regnum
Britanniae universum
semper in unum. Hujus
legis autoritate expulit
Arturus predictus Sa-
racenos & inimicos a
regno.*

This Law Arthur invented, who was the most famous King of the Britons; and there, that, is in the Polcmote, he Consolidated and Confederated the whole Kingdom of Britain into one. By the Authority of this Law, the said Arthur drove the Saracens, and other Enemies out of the Kingdom.

K

Then

Then the Report of the Confessor's Law shews the continuance of that Law, to that time, and that it had been received by King Edgar; in whose time, as I shall shew, the King of Scotland was Obedient to it, among the rest of the Peers; and after that by the Confessor. As evidence of History shews, that Arthur was Monarch of the whole Island; this part of the Confessor's Law, without looking back, to what Arthur was possessed of, shews manifestly, that from Arthur's time, the whole Island was not only one Kingdom; but all Persons within it, were under the obligation of the Oath of Allegiance, to act together as Subjects of one Crown.

This any indifferent Person might have observed, in so much as Sir T. C. thought for his purpose, to prove the Scots Densitens of England, as they were accounted one Nation with the English, and had always stood for the common Utility of the Crown and Kingdom; which is there shewn to be but one Monarchy. Yet it was but suitable to his undertaking, to pass by this direct Proof, from the very Authority which he receives; that from King Arthur's time, the Scots lay under the same Obligations with the other Subjects of the British Crown, for preserving its Rights and Dignities, the Peace of its Empire, and the Person of its Monarch. But so it is, that Sir T. C. thinking none but easy Men would Read what he had Writ; tho' he insists mightily upon the Authority of the Confessor's Law, to prove the Scots Densitens of England; would have it all pass

Vid. inf.

pass for Fable, where it demonstrates them to be Subjects to the Britiſh, afterwards called the English Monarchy.

Thus he counts all Fiction, which the Confessor's Law says of King Arthur, that *Fictitious King*, as he calls him; and for this purpose, that very Book, which he uses as a faithful Edition of the Confessor's Law, is to pass only, for a Book with the Title of the *Ancient Laws*, *Vid. p. 121.* Printed at London, by John Day, in the Year 1568; not believing that Men would observe *Vid. Sir.* this to be the Book, which he Cites else where, *T. C. p.* to prove the *Scots Denizens of England*, by the *236, 237,* *238.* Confessor's Law.

C H A P. XIV.

*Justification undertaken, of what E. Iff's.
Letter to the Pope, has farther of the
British times. Two Heads to be made out.
Of the Feudal Law in those times.*

I Have thus layed together some part of those Evidences, which satisfied E. I. and his Learned Council and Parliament, that the Kingdom of Scotland was part of the British Empire, Sway'd by the Glorious King Arthur; and that the King of Scots, as now called, but rather of Picts, did Service to King Arthur, for such part of that Kingdom, now called Scotland, as was then possessed by Scots or Picts.

*Aduo.
Rer. claus.
29 E. I.* To follow my clue, Edward I. farther assures the Pope, that successively from King Arthur's time, all the Kings of Scotland were Subject to the Kings of Britain.

That they were so, there needs no farther proof, than what has been produced from the Confessor's Law; which shews that all Persons, within the Island of Britain, owed Allegiance to its Imperial Crown.

That Wise King Edward, thought it not material, to give any particular instances from King Arthur's times, till Edward the Son of Alfred; it seems, not thinking the Monarchy to be accounted entirely Saxons or English, till then, because of the Usurpation of the

Danes,

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Danes, tho' he derives the right to it, from its continuance with the Britons. And 'tis observable that, tho' the Saxon Chronicle makes Egbert, or Egfrith, the eighth Saxon King, that Reigned over all Britany; I do not find there that those of South-Wales Submitted to him.

Vid. Inf.
An. 827.

And yet I may admit the right of the British Monarchy to have come to him, as Successor to Ina, who, as I shall afterwards shew, United a Saxon and British Title.

However, to remove the objection, from the Monarchie's not being fixed to any one part of the Kingdom, I must observe, that the Dispute is not about the right of a material Crown, but of that Authority, which, as the great Fortescue told his Prince, was *a populo effluxus* an effux, or emanative from the People: The same which the Civil Law holds, in relation to the more absolute manner, of a Prince's enjoying the *Supream Power* of a Nation. This Power might have its chief seat, sometimes in one part of the Island, sometimes in another; but that at last, all fell into the West Saxon Monarchy, as so many Rivers into the Ocean, is so plain, that it wants no Proof.

Vid. Gro-
tium demo-
do babendi
potestatem.

I may here well consider, the British Monarchy, as continuing truly British, till King Egbert's time; and therefore, whatever Superiority was exercised over the Kings and Kingdom of Scotland before that time, by any King, or Monarch of the English, or British, it may justly be indifferently applyed, for Manifestation of Cbron. eccl. August. sinensis. De this Right: And that the rather till at least the Year 827; because I find, that, in that An. 827.

Year Egbert was at Winchester, Crowned King of all Britain, and published an Edict or Law, that the Saxons, from that time, should be called English, and Britain, England.

In order to make what I shall offer the better understood, I shall shew,

I. That the feudal Law, was in use here in the British times ; and therefore, that the King of Scotland, if any such there were, or they who were possessed of any part of the present Kingdom of Scotland, might well do feudal Homage.

II. That they actually were Homagers, to the British Crown, for such part as they held in their own Country ; and at least Liege Men as Subjects, without regard to any Land that they held in England, or Wales.

The Proofs which I have Selected out of numbers as full in *Domesday Book*, of the Feudal Law in the Saxon times, may well induce the belief, that these usages were here before; unless the time of their being brought in can be guess at, with some probability : But I shall touch upon some positive Proofs of it.

The Confessor's Law, having mentioned King Arthur's Institution of the universal Folemote, of all the Spiritual and Temporal Peers, and Commons; and the Obligation they lay under, from their being Sworn Bretbren; to Defend the Person, Lands and Honours of the King, with the Fidelity of Liege-Men, to provide for the Indemnity of the Crown of the Kingdom; repressing the Insolence of Malefactors, and Defending the Crown against all Strangers and Enemies,

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& po
catalla
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dum s.
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The
to be l

Bare
consuetu
qui soc
de suis
ant ut
omnia
nus erg
reatum
coronan
dant.

nemis, which Institution is there shewn, to have been revived by King Edgar; that Law immediatly adds,

*Debet enim universi
liberi homines totius Regi-
ni justa facultates suas
& possessiones & justa
cavalla sua & secundum
frodum suum, & secun-
dum tenementa sua, ar-
ma habere, & illa semper
prompta conservare ad
tutionem regni, & ser-
vitium Dominorum su-
rum explend. peragend.*

For all the Freemen of the whole Kingdom ought, according to their Estates, and Possessions; and according to their Chattels, and according to their Fee, and according to their Tenements; to have Arms, and to keep them always ready for the Defence of the Kingdom, and discharging and performing the Service of their Lords.

Then, after mentioning, that the Arms were to be kept as heir-looms, it adds

*Barones verò qui suaz
consuetudines habent, &
qui socam habent Curiae
de suis hominibus, vide-
ant ut sic de eis agant &
omnia rite faciant quatenus
erga dominum Regem
rectum non incurant, nec
coronam regni prd. offendant.*

But let the Barons who have their Customs, and Suit of Courts of their Men, see, that they do so, concerning them; and do all things rightly, so that they incur not guilt towards their Lord the King, nor offend the Crown of the said Kingdom.

The late *Dean of Worster*, whose Learning might have shewn him enough of the Constitution of this *Monarchy*, to induce him to Swear Allegiance to the present Government; having undertaken to detect numbers of our antient Charters of *Forgery*; probably, because of the Words *Fee* or *Feud*, *Tenement*, *Fefsal*, or *Vassal*, and the like; I shall wait for his Objections, before I produce many of that kind: But to remove the supposition that the *Confessor's Law*, 4 *W. I.* was adapted to the usage by that time settled here by *W. I.* I shall refer *Dr. Hicks* and other undervaluers of the Testimony of old Charters, to one transcribed by a Monk of *Worster*, in the time of *W. I.* and a Judgment in the time of that King, concerning the rights of that very *Church*, to which *Dr. Hicks* had so near a relation.

Bib. Cot.
Niberius.
13. *Cartae*
Collecti. ab
Hennino
Mon. Cu-
nob. de
Worcester
temp. W. I.

The Charter is of *Wiglaf King of the Mercians*, and may serve for an additional evidence of the Truth of an other of that King's Charter's, which *Ingulph* assures us, he had Transcribed *Verbatim*; In which are the Words *Fee*, or *Feud*, and other *Feudal terms*.

An. 832.

The Charter of *Wiglaf to Worster*, says.

Pred. loca liberabo cum
universis Casalibus qui
ipso locis universis sunt
subditis hoc modo per secum
liberabo a pastu Regis &
Principum, & ab omni
constructione regalis vil-
lae, & a difficultate quum
Saxonice feasting-
men dicimus.

I will free those
places with all the Cas-
falls, who are Subjects
throughout all those
places in this manner,
I will free them for
ever, from Purveyance
for the King and Pri-
nces, and from all Build-
ing of the King's Town,
and from the hardship
which we in the Saxon
Language call Feasting
Men.

The Word *Cassal*, no Man can doubt to be
of the same import with *vassal* now; con-
sidering that the Persons to whom it was ap-
plied, besides that of contributing to the repairs
of the King's Town, or Fort, in the Neighbourhood,
(which as it might have been *Castleguard*, might
also have been by Virtue of the common charge
upon Land, without relation to Tenure) and
besides *Purveyance* for the Crown, was charged
with a corvay, or obligation to entertain such
a number of Men. That the word *Vassalus*
was used in the same Sense, as now before
King Alfred's time, we have the Testimony of
Affer of that time; who speaks of King *Ad. Vassallis*.
Vid. Affer.
Menev. de
An. 878.

bered, or *Estbered's* Flying from the *Danes*,
with some of his Soldiers and *Vassals*: But tho'
the *Casals*, or *Vassals*, in the Charter and their
Lands, were freed from most of the common
charges, that of the *Expedition* remained, to
wich, as will appear by the following Exem-
plification

plification of a Judgment, many within Oswald's Law were bound, by reason of Tenures.

Bib. Cot.
Tiberius
sup.

Godf. Cunfr. Ep. Re-
migis & Walkero Gif-
fardo & H. de Ferrever
& Adamo ceterisq; Ba-
ronibus Regis. Scilicet
quod ego testimonium fa-
ro, quia dum ex praecerto
Regis Placitum tenui int.
Ep. Wolstanum & Ab.
de Vesham quod Ep. de-
racionavit & bidas ad be-
nigniyrb & domos in
civitate de suo Feudo
esse, ita quod Abbas sibi
debet inde servire, sicut
alij sui Feudati. Et
deracionavit Socam &
Sacam de Hanton ad
suum Hundred. Oswald's-
laune quad ibi debent
placitare, & geldum &
expeditionem, & cetera
legisservitia de illis XV.
bidis secum debet per-
solvere, & Curisceat &
Sepulturam ad suam wil-
lam Croppetborn debent
reddere. Hoc fuit derati-
onatum & jurat. coram
me & Urs. de Aboet,
& Osberno fil. Esterob,
& ceteris Bar. Regis

Godfrey Bishop of Com-
stanes to Bishop Remi-
gius, and Walter Gif-
fard, and Hm. de Fir-
vers, and Adams, and
the rest of the King's
Barons; know ye, that
I testify, that while I,
by the King's Pre-
cept, held Plea, between
Bishop Wolstan, and
the Abbot of Uesham,
or Evesham; that the
Bishop deraigned 4
Hides at Benningey-
rbs, and Houses in
the City, to be of
his Feud; so that the
Abbot ought to serve
for it, as the rest of
his Feudatories. And
he deraigned the Soc,
and Sac of Hanton, to
his Hundred Oswald's
Law; that there they
ought to Plead, and
it ought with him
to yeildgeld, and ex-
pedition, and other le-
gal Services, for those
15. Hides; and the
Men ought to render
Church

jude-
tatu-
N
with
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ment
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Ferre-
the S
I.
ty Co
Freebe
exerc
II.
Justic
on, b
(a) Vi
berne
pate

judicante omni vicecomi-
tatu.

Churh Seed, and Bury-
al at his Town Grep-
thorn. This was de-
raigned, and Sworn
before me, and Urs
de Abetos and Osbern,
the Son of Eforb, or
Scoop, and the rest of
the King's Barons ;
the whole County
Judging and Testify-
ing.

Not to stay to prove, as I think I could
with clearness, that Urs de Abetos, who was
the then chief of Worcester-shire, and Osbern, the
Son of Eforb, who are all the Barons na-
med of them, who were present at the Judg-
ment, were old Saxons; nor yet to prove that
the Bp. Wolstan, was a Saxon Bishop, Henry de
Ferrers, and Adam de Port, the Ancestor of
the St. Johns's, were Saxon Barons.

I. I cannot but observe, that this was a Coun-
ty Court, where, by the Common-Law, the
Freeholders are Judges; and there were in full
exercise of their Power.

II. The King's Precept, was the Writ of
Justicies, which may to this Day be Proceeded
on, before the Sheriff, in the like Case.

(a) Vid. G. D. f. 176. a Ter. Osbemi fil. Ricardi Os-
bernus fil. Ric. Scaupe tenet de Rege BeGune Ric.
pater ejus ten. (b) F. N. B. Br. de Consuet. & servit.

III. This

Vid. inf.

III. This concerned what was within *Oswald's Law*, which is here accounted but a *Hundred*, as it was one in the *Fee*, yet in the Survey it appears to have consisted of seven *Hundreds*, which performing all manner of Service to, or under the *Bishop*; and being no part of the *Sheriff's Farm*, for which he was to account to the King; no part of the *Bishop's Fee*, is entered in *Domesday-Book*: And of twelve *Hundreds*, within that County, only five are entered in the great Survey, for that very reason expressed.

IV. This being preserved entire, under a *Saxon Bishop*, what ever Custom and Tenure was within those seven *Hundreds*, must needs have been from of Old; at least from the time of *Bishop Oswald*.

*Who was
Bishop in
King Ed-
gar's reign.*

V. Notwithstanding the exemption that *Hundred* had, it reached no farther than *Wiglaf's Charter* mentions, which leaves the *Expedition* as it was before. If, therefore we find the *Expedition* there, by reason of *Tenure*, we are to believe that it was continued from the *British times*, upon the first granting out of *Lands*, to the *Lords of Manors*, or to the owner of any *Capital Fee*, who might afterwards have granted out to others.

VI. That the *Expedition*, mentioned in this Judgment, was a service, by reason of tenure is evident.

I. All

I. All was within one *Fee*, or District, with
feudal Tenants under it.

II. All who treat of the *Feudal-Law*, agree,
that the first Institution of it was Military, or
with relation to the War.

III. Suitably to what might be shewn of
the time of *Cnute the Dane*, and the end of
the erection of *Baronies*; the *Bishop* was the
Heads-Man, or Leader: For they were to per-
form those Services which the Law required
with, that is, under *him*.

IV. The *Expedition*, was a Service expressly
shewn, to be as the Land lay within the *Bishop's*
Feud; and the same which the rest of his *Feu-
dal Tenants* performed.

This Judgment, with the account in Domes-
day-Book of the Land, of that Church, will
give mutual light and strength to each other.

*Ecclesia St. Mariae de
Wirecestre habet unum
Hund, quod vocatur Of-
waldeslaw, in quo jacent
CCC. Hid. De qui-
bus Ep. ipsius eccles. a
constituzione antiquorum
temporum habet omnes red
ditiones * Socbarum &
omnes consuetudines inibi
pertinentes ad dominicum
victum & Regis serviti-*

The Church of St.
Mary of Worcester, has G. D. Ter.
one Hundred, which eccl. de.
is called Oswald's Law,
in which there lie 300
Hides. Of which the
Bishop of that Church,
from the Constitution
of ancient Times; has * Vid. Le-
profits of all Pleas, and ges Ed.
all Customs there be- Cof. de
longing to own his Ta- soc & sac
um

um & suum. Ita ut nullus Vicecomes ibi habere possit querelam nec in aliquo placitovel in alia quilibet causa. Haec pred. CCC. Hides fuerunt de ipso dominico Eccles. Si quid de ipsis cuiuscunq; homini quocunq; modo attributum sive prestat. fuisse ad serviendum inde Ep. Ille qui istam terram prefatam sibi tenebat nullam omnino consuetudinem sibi metuenda retinere poterat, nisi per Episcopum neq; terram retinere nisi adimplatum tempus quod ipsi inter se constituerant, & nusquam cum ea terra se vertere poterat.

ble, and the King's Service, and his own; so that no Sheriff can have any demand there, neither in any Plea nor in any other Cause.

These abovementioned Hides, were of the very demesne of the Church; and if any part of them was any way given or granted to any body, to serve the Bishop for it, he who held that Land granted him, could retain no custom for it to himself, but thro' the Bishop, or by his Licence: Nor retain the Land beyond the time which they had agreed on, and could never turn himself with that Land.

Here are many things to be observed, of the Nature of the old *Feudal-Law*, some things particular to that *Fend*; wherein the entry plainly shews, that there were different Tenures in others.

I. It appears that the Tenure there was from the constitution of ancient Times, and therefore must have been before Oswald was Bishop of that See ; who Dyed Archbishop of York, in the Year 992. and the Survey giving this account of Oswald's Hundred, was in the Year 1085. If he had been Bishop of Worcester several Years before, what was about 100 Years past, could not be said to be of antient Times, or of Old.

II. Here was one great Manor, with a Court Baron, where Causes were Tryed; and the Bishop as Lord, had the profits of the Pleas.

III. It was a Barony, where the King's Service, which there could be no other but Military, as they were exempted from all other Service to the Crown, were performed under their Lord, at the head of them.

IV. Whereas parts of other Baronies were in several Hands, the Owners of which could raise Manors to themselves, which is employed in that of retaining Customs to themselves, no body could within that Fee, without Licence from the Bishop.

V. They were so far from this, that they could not do Homage for any of those Lands to another Baron, which many might else-*Vid. sup.* where; having liberty to go whither they would with their Land.

For

For Instance under *Terra Hugonis de Port in Hampshire.*

Hantescirs *Ipse Hugo tenet Chinebam Agbemundm de eo.*
 f. 45. *Ipse tenuit de Rege E. & potuit ire quo voluit.*

Hugh himself holds
Chinebam Agbemund of
 him. He held it of
 King Edward, and
 could go whither he
 would.

It appearing so manifestly, that the *Feudal-Law*, and particularly *Military tenure*, was from of Old, long before the Survey, by order of *William I.* in that part of *Worstershire*, which could receive no change by his coming ; the presumption is very strong, that it was here in the *British times* ; and according to the *Maxim*, this presumption ought to take place, till the contrary be proved, or at least some other probable time be fixed for the first entrance of the *Feudal-Law* here ; the conjecture of its coming in with *Norman's* sayling.

As much as may be, to shorten the enquiry into positive Proof of it, I shall prove Military Tenure in the time of the British *Cadwallader*, whom I shall afterwards shew to have been truly Monarch of all *Britain*. In the Cotton Library, there's an original Charter *Cart. Orig.* in *Bib. Cor.* of *Cadwallader's* ; wherein all that I have taken of his Stile, is
An. 675.

Caedualla Deo disponente Rer.

I *Cadwalla*, by God's Providence King,

Which

Which not being limited to any particular Kingdom; shews that he accounted himself *Monarch of the whole Island.*

He grants Land, whether to the Church, or a private Person, I need not observe,

In potestatem propriae dominationis.

Into the Power of the parties own Domination.

By this, the Grantee had Power to raise Services, in ease of what he otherwise might have been obliged to perform in Person.

That there were before that time *Feudal Tenants*, who either Paid, or performed Services for their Lands, appears, in farther confirmation of what I shewed above, by a former Charter of that King's, with the same Stile; which runs thus,

Libenter impendo lv. tributarios in illis locis qui vocantur Selesey, &c. cum aliis villis sibi coherentibus & cum omnibus ad se pertinentem.

I freely give 55 Tributaries, in those places, which are called Selesey, &c. with all Towns thereunto annexed; and with all things thereto belonging.

An. 673.

This could not be Land in possession, for that the *Tributaries* certainly held; and therefore could be only the *Seigniory*: If it be said the Word *Tributaries*, relates to the quantity, or quality of Land, and not to Persons, it comes to the same thing; as there was Service due from the Persons, for the Land.

Eviden- But that which shews *Selesy* to be a *Manor*,
tie Ec. of which several held, is that there were *Towns*
Cant. int. annexed to it. Thus in another Charter of
Scriptores 10 An. 68c. that King's, with the same Stile, to which he
was constant,

*Concessi quandam terram
mei juris que dicitur Pa-
gabam cum appendicis
eius circumquaq; adjacen-
tibus, i. e. Slindum, &c.*

I have granted cer-
tain Land in my dispo-
sal, which is called *Pa-*
gabam, with its appen-
dages, lying every where
round about, that is
Slindum, &c.

Seven more *Towns*, *Vills*, or *Manors*, are
named as *appendages*; which manifests, that
Pagabam was a *Capital Manor*, or *Fee*, of which
the other places were held.

If any think I put a forced construction up-
on these Charters, let them consider the fol-
lowing Charter of *Kennlbp* the *Mercian King* ;
grounded upon an *Inspeccimus*, or view of a
former Charter of this King *Cadwallader*, to
Abbington in *Berkshire*, within the *Mercian King-*
dom.

*Cart. Kp-
nulphi. An.
821.*

*Mon. I.
vol. f. 97.
Na. Cad-
wallader
in his time
governed
the Merci-
an King-
dom.*

*Donans, Donabo perpe-
tuis temporibus aeternam
libertatem in Sta. Trinita-
tis patrocinio per omnia loca
ad pref. Adon, pertinentia
quor. infra Nominantur
Nomina Culambam Che-
nington, Hengestesig, Cu-
manora, Earmundelosth*

Granting, I will
grant in perpetuity, e-
ternal liberty in the pa-
tronage of the *Holy Tri-
nity*; thro' all places ap-
pertaining to the said
Monastery, whose Names
are mentioned before,
Culambam, *Cheinington*

*Eatun, &c. Cum appen-
dicijs suis Geburatum
cum suis campis sicut
Ceadwalla Rex perdo-
navit, &c. concedens
perdonabo sicut prædi-
mus perpetuam liberta-
tem.*

*Hengefeseig Cumanora
Earmundeloeth, Eatun,
&c. with their appen-
dages, Geburatum with
their Fields, as King
Ceadwalla gave them,
granting, &c. I will
grant perpetual liberty
as we said above.*

Soon after follows in the same Charter.

*Expedicio cum XII.
Vassallis & cum tantis
Scutis exerceatur, antiquos
pontes & arces renoverent.
Ceterum pland & integrad
libertate Glorientur; Max-
ime cum ipsi deibus Do-
minicis VII. Missas pro
nobis saluberrimas offe-
runt, & armis Spiritua-
libus centum Psalterij
contra nostros hostes dem-
care non cessant.*

Let the Expedition
be performed with
12 Vassals, and with as
many Sheilds, let them
repair antient Bridges
and Forts. But let them
Glory in full and en-
tire Liberty ; especially
when they on Sundays,
offer up 7 Masses, most
beneficial for us ; and
cease not with Spiritu-
al Arms, 100 Psalteries,
to Fight against our
Enemies.

Tis evident, that this Service, was not newly
raised by the Mercian King Kenulph ; but by
Ceadwallader, whose Grant is here but confirmed ;
he plainly had granted a large tract of Land,
for the sake of Masses, for the Souls of him-
self and his Successors, to hold at the rate of
but 12 Knights Fees ; tho' otherwise it might
have been charged much higher.

Cart. An. Accordingly *Cadwallader*, in a Charter to
tisq. in Bib. *Wulfrid*, or *Wilfrid*, then *Archbishop of York*,
Cot. An. says,
43o.

Hanc libertatem sub estimatione LXX. tri-
butarior. taxavimus. We have Taxed, or
Rated this liberty, under the estimate of 70
Tributaries or Knight's Fees.

Vid. 18. Having proved *Knight's Service* here in the
Inst. tit British times; no Man, who pretends to have
Knight's read any thing of the *Feudal-Law*, will think
Service. me obliged to shew Homage here then; which
So Sir T. they must agree to have always been an in-
C. cap. 7. cident inseparable from *Knight's Service*.

Harding, who, tho' he writ in the time of
H. VI. cites ancient Authors, not now extant,
says of Cadwallader.

To whom the *Saxons* and *English* and eke *Britons*,
The Pugbes and *Scoties* and *Wash* of grete Power,
Obeyed than hole thrughoute the Regions,
*And Homage made, as sayth the *Cronicler*,*
And Soveriegne King, he was above them all, &c.

C H A P. XV.

The Fact in relation to Homage, within the British times. And the power acquired by the Saxons, from and under the Britons, while the Monarchy continued British.

Having shewed the Feudal Law, and particularly Feudal Homage to have been here in the British times; and therefore, that our Kings, if they had any Superiority over the Kings of that part, which is now called Scotland, might have had Homage of them in those times; and however, that the British Monarchs were intituled to the allegiance of all Persons whatever, within the Island; the right being settled, lets enquire a little into the Fact.

I proved out of *Nennius*, compared with the Register of *Mailros*, that the Kingdom of the Scots, within this Island, began not till the Year 843; when the Scots drove the Picts from all their holds, within this Island, under the Scottish King *Kinady*.

But before this, all *Lodery* was part of the Northumbrian Kingdom, which was erected into a Kingdom, by the Grant of the then British Monarch.

As *Gildas* shews, King *Vortigern*, by the consent of a general Council of the British Nation, called in the Saxons. *Nennius* says, Hen. 14, 15.

giff came hither in the Year 447; and by the King's leave, he sent for his Son, and other Saxon Soldiers, to fight against the Scots, and those who were of the Regions in the North, near the Wall which is called *Gall*. That by the King's orders, *Hengift* sent for them, and

Nomina

Ipsi cum navigarent circa Pictos vastaverunt Orcadas Insulas, venerruntq; & occupaverunt plurimas Regiones Trans Mare Freticum, i. e. quod intenos Scotosq; est usq; ad confinia Pictorum.

They having Sailed about the *Piôts*, wasted the *Isles* of Orkney, and occupyyed several Regions beyond the Waters of Fribb, that is, between us and the *Scots*, as far as the confines of the *Piôts*.

Tho' by *Nennius* his time, as was before observed, the *Scots* had driven out the *Picts*; the *Picts* were the only People of those parts, who were not entirely Subdued, and dispossessed by the *Saxons*, at their first coming: The then Confines of the *Picts*, must have been among the *Caledonian Britons*, who according to *Buchanan*, made one part of the Kingdom of the *Picts*: But the principal for some time, was *Lothian*, or *Lodeny*. Tho' the *Picts* had from the *Orcades*, and elsewhere, made incursions into *Lodeny*, and gained such Footing there, that it by way of eminence, before any other part had the Name of *Pitland*; yet as *Archbishop Usher* has shewn from *Bede*, and others, *Lodeny* became part of the *Northumbrian* Kingdom, which as it was erected into a Kingdom, with the consent, if not creation of

Buchanan,
f. 6.

the Britons, plainly had its first King, from the Grant of the then British Monarch. And ancient Authors are plain enough, that those parts were held of the British Crown, by Military Tenure, to fight against the Picts and Scots.

'Tis evident, as was shewn before, that Ida's Successor, Ethelfred, had Investiture from the British King Adalgo, as from the Lord of the Fee.

The Saxon Chronicle continues the Succession from Ida, to Aella; who, according to the Saxon account, Dyed Anno 588; from him to Ethelric, Ida's Son. *An. 588.*

Against the Investiture of Ethelric, or as others suppose of his Successor Ethelfrith, with that Feud, by the British King Malgo, Sir T. C. had made a learned Objection, as if thereby the Lord of the Fee, forfeited his Seigniory over the Scots. When in truth it was but a rightfully placing a King over such of them as were within those Bounds. *Vid. sup.*

But as Malgo, according to the British ac. Vid. Prid's count, Reigned from the Year 552, to 586. Inerod. he, as Gildas shews, was till, or about that time, King over all the Kings of the Island.

And as the British Monarchy continued till his time at the least; the Kings of the Northumbrians Succeeding their Fore-Fathers, who were sent thither by the Britons, to restrain the incursions of the Picts and Scots, were Soldiers, and therein Homagers, to the British Monarch.

The Northumbrian Kingdom, from Ethel-*Cron. Sax.*
ric, came to his Son Ethelfrith, or Ethelfrid, 593. 596.
L 4 who

who was King of the *Northbanbymbrians*, three Years after the famous Monk *Austin* came into *Britain*, who, as will appear, was a means of continuing the whole Island under an entire *Monarchy*.

Soon after *Austin's* arrival, *Bede* places the overthrow of King *Eden*, mentioned above.

A writer, who ought to be of equal authority with *Bede*, being as great a Bigot, and, for ought appears, more ancient, shews plainly that the *Scots*, who were here in *Ecgfrid's*, or *Esbelfrid's* time, were under the *Picts*; and that all the *Picts*, were before that time Subject to the *Northbanbymbrian* Kings; and continued so during the Reign of King *Esbelfrid*, or *Ecgfrid*, as he is there called, who Dyed ^a An. 617.
 " b In his first Year says this Author, before
 " he was well settled in his Kingdom, the
 " bestial People of the *Picts*, with a fierce
 " mind despised *Subjection* to the *Saxons*, and
 " threatened to throw off the Yoak of Servi-
 " tude.

Then, having mentiond their Assembling innumerable People, of several parts of the North; and that there was a prodigious Slaughter of them, he concludes,

(a) *Cron. Sax.* (b) *Angl. Saora vita S. Wilfredi*, tenet
ad hoc regno populi bestiales Pictorum feroce animo Sub-
jectionem Saxonum despisebant & jugum servitutis a se
abjicere minabantur.

*Et in servitutem redacti
populi usq; ad diem oc-
casionis Regis Subjecti
jugo Captivitatis gace-
bant.*

And the People be-
ing reduced to Servi-
tude, lay Subjected to
the Yoak of Captivi-
ty, till the Day of the
King's being Killed.

Harding says, of that Saxon King,

Then *Ethelfride*, that King was of Northumber- Harding's
MS.
land,

With *Aydene* Fought in Batayl grete and
strong,
That than ne was King Coround of all Scot-
land.

As the *Saxon Chronicle* shews, *Ethelfrid*, or
Eigfrid, was Killed by *Redwald*, King of the
Eastangles.

It appears by the Author above, of the
Life of St. *Wilfrid*, that the *Picts* were at the
time, of which he writes, under the *Northan-*
bryrian Kingdom; and by consequence their
King was an *Homager*. But that they were
Homagers to the Kingdom of the *Saxons*, or to
the *British Monarch*, will not be doubted if
the King of the *Picts*, was given them by either *Vid. Nen.*
the Saxons or *Britons*. That he was not of their
own Country, there is positive authority from
these Words, in the *appendix to Nennius*; speak-
king of *Ecbfrid*, as he is there called. *ed. per D.
Gale, f.
116.*

Ipsæ

*Ipsa est qui fecit bellum
contra fratrem suum
qui erat Rex Pictorum,
nominis Birdei.*

He it is who made
War against his Brother's
Son Birdei by Name,
who was King of the
Picts.

Indeed that Author, ascribes the Victory
to the King of the Picts: And says, that, from
that Day, the Picts never paid the ancient
Tribute.

Before, it seems, the Northumbrian King,
had a Tribute from them; but its plain from
the Saxon Chronicle, that the Picts must have
Fought under the Pretender to the British
Monarchy, who was *Redwald*; whom the Saxons
make Monarch of the Island at that time.
Yet such proofs as I shall soon bring, that the
British Monarchy continued beyond that time,
may put it past question, that *Redwald* must
have fought as *Homager*, to the then British
Monarch; and leave no room to doubt, what
Hollingshead reports from the British Writers,
that *Etbelfrid*, or *Etbelfred*, as he had been
invested with the Kingdom of the Northum-
brians by *Cadwan*, had *Lobian* which was
part of it, and all the Lands which the
Scots then Inhabited, of his Gift; which he
re-seized, upon *Etbelfrid's* Rebellion.

Sir T. C. from the authority of lying Poly-
dore, says, *Etbelfrid* was, with his whole Army
Cut off by the Scots: But as before the Scots,
being Subjects to the Crown of Britain, Fought
under the Northumbrian King, against *Eden*;
here the Picts did under the East Saxon Ge-
neral of the British Forces. Sure I am, I may
well

Vid. Sir

T.C.p.159.

well prefer the Authority of the *Saxon Chronicle*, which ascribes this Action to the King of the *Bastangs*.

Sir Thomas Craig, who, like Doctor Brady, had a wonderful felicity in triumphing with Authorities point-blank against him, would have the grant of *Lobian* by *Cadwan*, and in upon *Ethelfrid's* Rebellion, not in the resalutin least to affect the Question of the Subjection of the *Scots*: For, says he, *Lobian* was not then a *Scotish Province*, but belonged to the *Picts*, whose Kingdom was then entire.

But if *Lobian* was a *Pictish Province*, and that *Kingdom* was then entire; does it not follow from his own Argument, that the possession of *Lobian* carried that entire *Kingdom* along with it?

He says, indeed, that *Bede* mentions *Ethelfrid's* Victory over *Eden*, or *Aiden*, whom *Bede* calls *King of Scots*.

Sir T. C. himself seems to suppose, he was King of the *Picts* too; but what I have shewn above, makes it evident, that the *Scots* then Settled here, Fought under the *Saxons*, against a King of the *Scots* from *Ireland*.

But it ought not to be passed by, that Sir T. C. confesses *Lobian* to have been then a *Province of the Picts*, wherein he tacitly yeilds, that, by the re-uniting *Lobian* to the *British Crown*, the whole *Kingdom of the Picts*, which was then entire, fell under the *British Monarchy*; as the *Scots*, who contributed to this, were before. The *Saxon Chronologist*, supposing the *Monarchy* to have been in the *Saxons*, from their *Ellas*, who, tho' he had the *Northumbrian Kingdom*, is called King of the *South Sax-*

An. 360.

Cron. *Sax. Saxons*, makes *Egbryht*, or *Egbert*, to have
de An. 827, been, but the eighth of their Kings, who *Britenwalda*, as the *Laudan Copy* has it, *Brytenwalda* as another *Britenwalda*, and the *Cotton Britenweald*, all coming to the same thing, who weilded or sway'd all *Britain*; because of *Redwald's* going so far from his own Territories to reduce the *Northbanbymbrians* to due Subjection, will have it, that he was one of the eight *Saxon Monarchs* of all *Britain*, before *Egbert*. Admit the *Saxons*, because of their Successes afterwards, must be allowed to rule over the *British Authors*; this makes nothing for the *Picts* and *Scots*, who, with the *Britons*, have fallen under the now *English Empire*; but shews that there were several Kings within those times, before the Monarchy was

Vid. S. H. called *English*, big enough to demand and receive
Lib. p. 278. Homage from the Kings of the *Scots*, if any such were settled here then, but rather of the *Picts*, as General Attornies for their Peoples and to exact Oaths of Allegiance, from such of them as our *Monarchs* thought fit. But that *British* writers are to be justified, in continuing their *Monarchy* farther downwards, is very obvious.

Whether *Redwald* was himself the *Monarch* of all *Britain*, or *Homager* to *Gadwan*, when *Ethelfred the Northbanbymbrian King* was Killed, and his Forces routed, 'tis certain his Death gave no advantage to the *Picts*, to enlarge their Bounds; much less to the *Dashredians*, the *Scots* settling here, who were immediately under the Government of the *Saxons*.

Ethelfred was immediately succeeded in the Norbanbymbian Kingdom, by Edwin the Son *An. 617.* of Ella. This Edwin could not have come to it, otherwise than of the gift of the then British Monarch; however, he succeeded his Ancestors, in the Duty of Subjection and Homage to the British Crown; as they had the Norbanbymbian, on the very condition of securing those parts, from the depredations of the Picts and Scots.

According to the *Saxon Chronicle*, Edwin subdued all Britain, except the Cantuarians; so that at that time, which was before the British Monarchy expired, Edwin was possessed of the Chief Power of the Island: But the Seat of his Power was in the North, where he could the more easily keep the Picts to their ancient Subjection.

The Saxon Writers will have Edwin to be the Monarch: But as Cadwalla kept up the British Title, even the Saxon Authors, unwillingly confess his Right.

As the *Saxon Chronicle*, and *Florence of Worcester*, who follows that, have it, in the Year 633, he killed Edwin, who was possessed of all, which was divided into the Deiran and Bernician Kingdom, under his immediate Successors Osric and Eanfrith. They were soon succeeded by Oswald, and the *Saxon Chronicle* says, the Year which they Reigned, was divided between Edwin and Oswald, because

Bede f.
162.

cause of their *Paganism* who reigned that Year. But *Bede* gives the true Reason, because of the *Tyranny of the Mad British King Cadwalla*, whom nothing could stand before. And *Nicholas of Glaston*, who continues the History no farther than King *Ethelwolf's Reign*, says, that *Cadwalladar* Celebrating the Feast of *Pentecost*, at *London*; *Penda* who was King of the *Mercians*, asked him, why *Oswi*, then King of the *Northumbrians* was the only Person absent, from the *Assembly* of his *Barons*.

Thus we find by the Confession of the best *Saxon* Authors, that *Cadwalla*, or *Cadwallo* had kept the *British Monarchy*, from being eclipsed in his Days, and that he left it entire to his Son *Cadwallader*, who Dyed possessed of the *West-Saxon Kingdom*, which was the first erected among the *Saxons*, and as it has swallowed up the rest, was of old agreed to be the chief Seat of the *Saxon Power*.

Afferint
Monos.

For which, *Affer* of the time of King *Alfred*, must be allowed to be a Sufficient Authority; he speaking of *Abelwolf's* going to *Rome*, which gave his Son an opportunity to set up for himself, and to endeavour to prevent his Father's return to his Kingdom, shews that a great Council being held on this occasion,

Omn.

Omnium astipulatione
Nobilium adunatum ante
regnum inter patrem &
filium dividitur; & ori-
entales plaga Patri occi-
dentales filio contra de-
putantur; ubi enim Pater
iusto judicio regnare de-
buerat, illuc iniquus &
pertinax filius regna-
bat; nam occidentalis pars
Anglie semper orientalis
principalior est.

By the astipulation *Asterijan-*
of all the *Nobility, the nates, f.*
Kingdom before, but ^{152.}
one, is divided; and
the Eastern part was
assigned to the Father:
On the other side,
the Western to the Son.
For where by a just
judgment, the Father
ought to have Reigned,
there; the wicked and
pertinacious Son Reign-
ed; for the *Western* part
is always more prin-
cipal than the *Eas-
tern*.

Cadwallader being possess'd of the *West-Sax-*
m Kingdom, which was the Seat of the *Sax-*
m Power, ruled not only over all *Pictland*;
which Bede shews to have been under the
Empire, or Dominion of the *English*, or *San-*
m; but had the *Picts* else where within the
land, and the appendages to the Crown, un-
der such a League as kept them in *Subjection*, all
Bede's time; and the Government of the *Scots*
being then *Pictish*, they were involved in the
Subjection of the *Picts*.

If it be imagined that *Eden*, who was King
of the *Scots*, was not a *Pictish* King; yet the
Picts were most Powerful, and their Kings Ruled
over all the *Scots* in those parts, long after
Eden's time; as appears from what Historians
say

Vid. S. Duh. say of *Unust King of the Piets* in the Year 755,
f. 99. and others after him. *Cadwallader* transmitted
the *British Monarchy* to the glorious King *Ina*,
who, as appears by the true reading of the
Copies preserved of the *Confessor's Law*, was
not crown'd by an *Angel*, as the Print has it,
but *per Angliam*, throughout what at the time
of that Law obtain'd the Name of *England*,
which, as that Law shews, took in the whole
Kingdom of Britain. *Simeon of Durham* says of
him, he was a King most famous thro' the Ex-
(a) *S. Duh.* tent of the whole Nation of the *English*, who
Occidental royally extended the *Kingdoms of the West-*
regionum Saxon Regions.

But the Style which he assum'd, was *Monarch*
of *Saxony*.

That *Ina* succeeded the *British Cadwallader*
in the *West-Saxon Kingdom*, may be prov'd by
several Authors.

Ralph de Diceto calls *Cadwallader* *King of the Britons*, and mentions two *Fuors*, one his Son,
Cron. who was very successful under him against the
Saxons. The *British MS.* translated by *Jeffry of Monmouth*, makes *Fuor* to have been the
Son, and *Ini* the Nephew, who yet might very
well have been Son-in-law.

Tho' *Cadwallader* was *Monarch* of all *Britain* ;
the Seat of his Power was in *West-Saxony* ;
therefore *Bromton* and others, who call him
Cedwalla, name him *King* of the *West-Saxons*,
and say that *Ina* succeeded him in that Kingdom.
With them the *Saxon-Chronicle* agrees, and says
that *Ina* went to reign over *West-Saxons*, the
West-Saxons, after him.

This

This is placed in the Year 688, but tho' he began his Reign then, he was not possessed of the Monarchy till afterwards; for in the Year 709, I find a Charter of *Kenred*, called there King of the *Mercians*, and in the *Saxon Chronicle*, of the *Southumbrians*, wherein he says he was,

Artipulatus Monarchid Albionis regni.

Artipulated with, or Chosen into, the Monarchy of the Kingdom of Albion.

That *Ina*, truly United the *Britons* and *Saxons* under one *Monarchy*; then continuing British, I have no less authority than the Confessor's Law, in that very part, which Sir T. C. thought fit to use, to prove the *Scots* to be *Denizens of England*; passing over the true ground of it, and leaving out what would even farther demonstrate it, than so much as he found necessary to use.

He shews from the Confessor's Law, that *Ina* Marryed a Wife out of *Wales*; but conceals the derivation of a Right to the *British Monarchy*, from, or by reason of that Marriage.

That Law ratifyed, by *W. I.* speaking of his being Crowned throughout *England*;

*Capiunt enim cum ultro. — But with his last wife, he took *Wales*, and *Cornwall*, and the blessed Crown of *Britannia*.*

tania que fuerat ultimo
Cadwalladro Regi. Bri-
tainiae. tain, which had been
enjoyed by Cadwalla-
der, the last King of
Britain.

Spelman. And this, as appears by that Law, and in
Concil. 1. Spelman's Collection of Councils, was with a
Vol. f. 219. National consent; for a Council of all the
Bishops and Princes, Peers, Earls, and all the
Grave Wisemen and People of the whole Realm,
met in a Council, upon Ina's Summons.

Cum iam Gualam fil.
Cadwalladri Regis Bri-
tonum cepisset, & coro-
nam Cadwalladri adcep-
sus est.

He having taken to
Wife Guala, the Daugh-
ter of Cadwallader King
of the Britons: And
he obtained Cadwalla-
der's Crown.

Thus it appears, that the British Monarchy
continued to that very time; and that the
Foundation of Ina's Right, to be declared King
throughout England, was a consent of the whole
Realm, and that, not Founded on his succeed-
ing to the West-Saxon Crown; but in or upon
the right of his Wife, by whom the Saxon
claim to the Monarchy was merged; and
the British Right was truly remitted and re-
stored.

Which shews, that I may well account the
Monarchy truly British; till the Great Council
of the Kingdom in Egbert's time consented,
out of Respect to their King, that the Mo-
narchy should be new Named: Which made

no alteration in the rights and appendages of the old British Crown.

I doubt not, but 'tis now evident, that during this time, the *Picts*, and much more the *Scots* within Britain, who had not yet Kings of their own, were Subjects of the British Monarchy; and that the *Pictish Kings*, for Scotch there were none, were both in fact and of right, *Homagers* at least, without regard to any Lands, within the present limits of the Kingdome of *England*, as considered in relation to the immediate Government.

If it be sayd, that this does not affect the question of Right arising from Fact, because no King of *Scotland* was *Homager* to any British King; surely no Man can be so weak, as not to understand the fallacy. But directly to the mighty objection, let them shew one Kingdom of *Scotland*, or any King of *Scots*, settled here within this time, unless of such as were mingled with the *Picts*, or under the *Saxons* or *Britons*, and I will shew where and when he did Homage to the British Monarch, for all his Kingdom.

C H A P. XVI.

A particular deduction of the Right over Scotland, from the first erection of the Saxon Monarchy, to Edward, the Son of the glorious King Alfred, and of the Feudal Law in his time,

IT has by this time been most evident, that the Scots were not to be looked on, as a Nation settled in this Island, till the Year 843. That such Princes, or Nobility as they had, must have been liege Homagers at the least; and all the People liege Men, or Subjects to the British Crown, without regard to any part within the British more immediate Government, possessed by the Scots, as a Nation; and in truth, that they were not to be looked on as a Nation settled here, till their first Scotch King Kenady.

It has farther appeared, that the British and Saxon Power in this Island, was united in *his* by a general consent of all, whose consent was of any avail; and that upon the prevailing inducement of his having the interest of the British, as well as Saxon Royal Family, united in him.

Ina, as he had the right to the intire Monarchy, for ought appears was in full possession of it; when being satiated with worldly Glory, according to the Bigotry of that time, he went

went to take a fore-tast of the Future at Rome, or to secure ready admittance, by a Ticket from St. Peter's pretended Successor to the Key of Heaven.

Ina was succeeded in the West-Saxon Kingdom, by his Cousin *Ethelbeard*, but he had not Reputation, or Power to retain the British Crown; for one *Ethelbald*, who is spoke of, in the Saxon Chronicle, as taking the Town of *Sumerton*, but no where in that Book, as I have observed, as King, in an original Charter, in the Cotton Library, in the Year 730 ^{Cars. Orig.} Subscribes a Charter, with the Style King of ^{in Bib.} Britain. ^{Cop. An:}

This *Ethelbald*, in the beginning of his Charter, calls himself King, not only of the *Mercians*, but of all the Provinces under the general Name of the *Southangles*. These were within his immediate Government, but he was *First-King*, or *Monarch* of the whole Island.

And yet another had fairer pretence, if he had Virtue to keep it: Which was *Ethelbeard*; not only, as he had the West-Saxon Kingdom, but for a reason, which the Saxon Authors did not think fit to mention, as he was Brother to Ina's Queen *Guala*, for I find him ^{Mon. i.} Signing one of Ina's Charters, with the ad. ^{vol. f. 13.} dition of the Queens Brother.

From him, to *Egbert*'s restoring the exercice of the Power over the Nation to the right, the Administration was floating, but never quite taken from any of Ina's Successors, in the West-Saxon Kingdom.

Ecgbert, as the *Saxon Chronicle* shews, descended from *Ingild*, *Ina's Brother*. The *Divine rights Men* may, indeed, object that it does not appear that *Ecgbert* was the next in the Line, or however, that the descent to the *British Throne*, not being continued from *Cadwallader's Daughter*, the *British right* returned. To which there are two obvious Answers.

I. That in those ancient times, they rarely regarded *Proximity*, but for the most part *Consanguinity*: And even *Affinity*, entitling them to the privilege of the Royal Family, was held sufficient.

II. That the *Scots* will have no reason to Object this, till they answer all other Objections, against their long train of Successions; besides that which has not been lately raised against the *Divine Right* of *Robert III.* Tho all agree he had a good Civil Right, upon more manifest grounds.

Ecgbert, according to the *Saxon Chronicle*, was the eighth King; when *Bretwalda* weilded, or Governed *Britain*.

*Mon. i.
vol. 32.*
*Scriptores
ed. per Sav.
f. 478.*

A MS. cited in the *Monasticon* has it, that he was chosen King of all *Britain*, by assent of all parties.

Etbelwerd, whose Authority Sir T. C. receives, agrees fully with our *Saxon Chronicle*, and makes him the eighth of their Kings, who was in

(a) Of this at large, vid. *Reflections upon a Treasonable opinion, against Signing the Association*, per. W. A. & hic. inf.

*Britannia pollens potestate ; "Excelling in Power,
" in or thro' Britain: Or rather possessed of the
Sovereignty of Britain.*

The British Monarchy, became English, upon Egbert's being Crowned Monarch of all England in a great Council at Winchester, in the Year 817; hence is the date of the English Monarchy; tho' perhaps he had not the full exercise of that Right, till the Year 834, when he had a great Victory over the Britons and Danes.

The Register of Abington says of him,

Bib. Cor.
Claud.B.C.

*Omnis Reges Brito-
num in deditionem acce-
pit.* He received all the Kings of the Britons, to a Deditio[n], or giving up themselves to be his Homagers.

That the Scots were under him, is plain, from their Register of Mailros; which tells us, that he committed Spoils, or Depredations in the Realms of others, and no body could resist him. Nay farther, to put this matter out of Dispute, the Register being writ among the Scots, the Composer calls his Country Scotland: But them he owns, that Egbert wasted Scotland, because their King broke the pact of Peace, which manifests, that this was because he had departed from the ancient Subjection, which he had promised.

Still, date the English Monarchy, at the latest, as then taking in the British; and yet this English Monarchy, which as it was grafted into the British, then gave a denomination to the Stock, was 9 Years older than the ancient Kingdom

Cron. de
Mailros de
An. 834.

An. 843.

of Scotland : And that of no larger extent, than what was gained, by driving out of the Picts.

That Kingdom, as appears above, did not take in *Pictland*, which reached over all *Lothian* at the least ; and tho' Cunna bringing a considerable force of *Scots* from *Ireland*, expelled the *Picts*, and settled here King of his *Scots* ; he and his People succeeded only to the *Pictish* Power, which was Subject to the *British* Crown.

In the Life time of *Ecgbert* his eldest Son *Erbelstan*, was taken in as partner, in the Monarchy : I find a Charter of *Erbelstan's*, in which he Stiles himself *Monarch* of all *Britain*.

He chusing to continue a *British* Style, 'tis the less to be wondered, that the *Saxon Chronicle* says nothing of him.

Kent, Surrey and Sussex, were under his more immediate Government ; but he continued his Stile of *Monarch* ^b of all *Britain*, beyond the Year ^a that *Cuneda* set up a Kingdom among the *Scots* here.

Erbewulf, who was first designed for the Church, was for sometime within *Ecgbert's* Reign, King ^c of *Kent* : For I find a Grant of *Ecgberts*, with consent of his Son *Erbewulf*, King of *Kent*.

Erbewulf Succeeded his Father, in the *West-Saxon* Kingdom, in the Year 838.

(a) Vid. Bib. Cor. *Doomitian A. 8.* *Cron. Sax.* *lat. de eodem.* (b) Vid. *Mon. I.* vol. f. 195. (c) *An. 843. Weldingealle Britone.* (d) Vid. Bib. Cor. *Int. D. 2. f. 125.* *An. 836.*

In his time, or rather *Atbelstan's*, who continued King of all the *Britains*; the *Danes* began to be powerful within this *Island*; and if the *Scots* did not assist the *English Monarch*, to repel their incursions, as appears by the *Confessor's Law*, they disregarded the Obligation, of the *Fundamental Law*, and *Oaths*, under which they lay. The *Northumbrian Kingdom*, which was the check to the *Scotch Incursions*, and enforcer of their *Allegiance* to the *English Crown*, was then in the Hands of the *English*.

But the Power of the *Monarchy* was much weakened, by *Ethelbald's* being in the Life-time of his Father, and of *Ethelstan*, made King of the chief Seat of the *English Monarchy*, *Vid. Sup. Afferium.* which was as it were divided between him, his Father, and *Ethelstan*.

He, who in the *Register of Mailross*, is called *Adestan*, Uncle to *Atbelbert*, according to that left the *Monarchy* to his Nephew, and Heir *Atbelbert*. *Reg. de Mail.* *An. 860.*

The chief Seat of the *Saxon Power*, as *Alfred* the youngest of King *Ethelwulf's* Sons declares in his Will, was possessed according to the rule of Succession, appointed in a great Council, or Parliament at *Langedene*. *Vid. Ap-*
pend ad vi-
ta. Alfredi,

Ethelbryth, the next to *Ethelbald*, and Successor to his Uncle's Style, held the Monarchy in great Peace, all his Days. *Eallum Rice Cron. Sax.*

In the Year 866, *Ethelred* and *Alfred* succeeded as Partners in Power, which *Alfred* in his Will, calls all *West-Saxony* to Wit. *An. 866.* *Cron. Mail. 864.*

Yet

Yet hitherto there seems no full *National Consent*, and the Monarchy seemed to be claimed only in Virtue of the Settlement of the *West-Saxon Crown*.

S. Dum.

And therefore, as it seems past doubt, there was a general Assembly of all within the *Island*, who did not submit to the *Danes*, to consider where to place the *Crown of the Island*, to secure it against those Invaders. As *Simeon of Durham* has it, *Alfred* was, upon *ADucibus, &c.* the Death of *Ethelred*, chosen by the *Princes and Prelates* of the whole *Nation*; and not only by them, but also was *entreated* by all the People to Reign over them.

Alfred's near Kinsman Ethelwold says, he was Successor *totius Principatus*, that is, of the whole *Monarchy*.

Alfred was a Man, raised up by the Almighty to revive the sinking *Monarchy*; which no other Man of that Age, could have preserved from the inundation of the *Danes*.

An. 871.

His Reign began in the Year 871. In that Year, many Battles had been Fought with the *Danes*, who made peace with the *West-Saxons* that Year, and the Year after with the *Mercians*, who had a distinct King under the *Saxon Monarch*.

Cron.

At that time, the *Danes* made some Settlement, in the *Northumbrian Kingdom*; and in the Year 875, their Leaders *Hreopedun* and *Halfden* Subdued, and frequently wasted the Land on *Pebbas*, and on *Stræth-wales* of the *Picts*, and *Streacled-welsh*.

Sax. An.
875.

These *Streacled-welsh* were *Britons*: And it seems, that whatever Power *Cuned* had secured

cured in his time, to his Country Men; it continued not above 32 Years together, from the first erection of a Kingdom of Scots here; for by the Year 875, the *Picts* and these *Welsh* had got the Power.

The Learned Mr. *Lloyd*, speaking of the *Breviary of Brit. p. 30. 3f.* *Selgovij* and *Hadeni*, who in times past inhabited *Cumberland*, and the *Redshanks*, who had been Subdued by the British King *Arviragus*, after they had been for some time settled in *Albany*, says, "it is well known that these Countries, together with *Gallowidia*, so far as the River *Cluda*, unto the Year 870, were in the *Britains* possession.

The supposition, that they then withdrew into *Wales*, that Learned Gentleman might be led into, from their being generally known after that, by another Name. But as will appear, their possession of a considerable Country in those parts, continued downwards to this Day.

For this, Mr. *Lbuid* seems chiefly, to rely upon the *Scotch Historians*.

Marianus's MS., as he observes, was published with great part, in relation to the *Britons*, omitted.

Affer, who lived in the very time, in which he writ, confirms Mr. *Lbuid's* Correction of the *Saxon Chronicle*; for one Year makes no difference, because, some begin the Year at one time, and some at another. He speaking of the Year 871, and of the Army of the *Pagans* dividing, says, that under *Halfdan*, went into the Region of the *Northumbrians*, and put their whole Region under his Dominion, *Strele and denses.* *Affer, f. 159. An. 871.*

and they depopulated the *Picts*, and the *Streacle-densians*, but not a word of the *Scots*; they not being accounted a People, but falling under the Denomination of them, among whom they liyed.

Ethelwerd, The Saxon Historian *Ethelwerd*, agrees in time with the Saxon Chronicle, and speaking of that division of the *Danish Forces* says,

Grebrinus inducunt Picti bellum Cymbrisq;. They often bring War upon the Picts and Cumbrians.

The last of which, were plainly the old *Cumbrians*; of whom I shall have occasion to say something, and these seem then the chief of the *Streacle Welsh*.

Affer and the Chronicle, tho' they differ fou: Years in the time, agree in Substance, and inform us, that *Halfden* divided all the Land of the *Northumbrians*, between himself, and his Men, as *Affer* has it; who, says he, cultivated it, with his Army; the Chronicle says, his Men Ploughed and Cultivated it, which come to the same thing; only that *Affer* leaves it the more strongly to be inferred, that as many were to Plough, for the Subsistence of the Soldiers; many of them held of their King in Chief, by Military Tenures.

Still the *Saxon Chronicle* speaking of *Alfred*, in the Year 886, says, "The whole English Nation, turned to, or obeyed him, except that part which was under the Power of the *Danes*,

Where,

Where, by *English Nation*, was plainly meant, the same with *British*, before the Name of the Monarchy was changed; but by that Chronicle, it would seem, as if the *Picts*, the *Cumbrians* and all others, of the *Northern* part of this *Island*, were under the *Danes*; for their King *Godrun*, is called *Se Notherna Cyring*, the An. 890: Northern King, or King of the North; and *Affer* calls them *Nord Manni*, the Men of the North.

In the next Year, the Chronicle mentions 891. the Landing of three *Scots* from *Ireland*, who came hither out of Devotion, as *Pilgrims*, *Dubstan*, *Maceebeth* and *Maelumm*; certainly the same with *Malcolm* the first, who according Sir. T. C. to Sir T. C. succeeded *Constantine*, as his next p. 181. *Kinsman*.

In the Year 894, the *Northymbre*, the Men An. 894: of the North of *Humberatbigefeald* gave Oaths, or Swore to King *Alfred*, which was mani- festly Swearing Allegiance.

In the Year 897, *Wulfric* the King's Gene- 897. ral *Dyed*, who was also *Walb Gefera*, Earl of *Britain*, which Manifests *Alfred*'s being ac- counted King of the *Saxons* and *Britons*; and therein *Monarch* of the whole *Island*.

Farther to clear this, *Simeon of Durham* says, the King of the *Scots*, the *Cumbrians*, the *Stretg- S. Dun. f.* *Iudynians*, and all the Kings of all the *Br- 131*, *tions*, in dedicatione accepti, he took into Subjection.

In his Reign, the Feudal-Law may appear with great demonstration, to have flourished. The Word *Vassal*, was, as I mentioned above, then in use; And when ever Land was granted out by the King, without any express Reser- vation

vation of Service, or a *Military Tenure* arose, and *Homage* as incident to it. For which I have no less Authority, than the Compiler of the first part of the *Register of Abington*, there 'tis entered.

Regist. Ab. *Rex Alfredus willam*
in Bib. Cor. *que Appelford appellatur*
f. 16. *enidam fidelis suo pro Ser-*
vitio & Homagio suo
nomine Beormodo dedit.

King Alfred gave the Town called *Appelford*, to a certain *Liegeman* of his, *Beormod* by Name, for his *Service* and *Homage*.

The Charter follows there, and has no more of this matter expressed, than that he granted this in exchange, for a place called *Harandunt*, with liberty to give, to what Heir of his, or Monastery he pleased, providing, that it should be free from all secular Services, except three, the *Common Expedition*, *Repairing of Ways*, and *Bullding Bridges and Royal Forts*.

This of the *Expedition*, many suppose to imply no *Tenure*, because it lay upon all Lands, for the Defence of their Country: But it appears by this instance, and might more fully, that from the grant there rose a *Tenure of the Crown*; and this *Tenure* inferred *Hege Homage*; obliging the Person to Serve the King in his Wars, where ever they were, unless special provision was made to the contrary.

And thus it was, long before the time of King Alfred.

An. 901. In the Year 901, that Glorious English Monarch Dyed; and as, according to the *Saxon Chronicle*, he Dyed King over all the English Nation;

Nation ; the British Name, being before that time, changed by consent of all, except only them who were under the Power of the Danes ; 'tis evident that he was *Monarch* of all, in right ; as the then possession of the *Danes*, was an usurpation.

If the *Picts* and *Scots* submitted to them, and assisted to continue that Usurpation ; and that came Afterwards to be removed ; of course they fell back to their former Subjection to the Crown of *England*. But, being Zealous for their true Honour, I will rather believe that they, to their Power, assisted the *English*, in re-uniting that part which had been under the *Danes*, to the Crown of this Empire.

That the *Danes* and *Swedes*, with the rest of the Inhabitants of the whole *Island*, as they ought owed Subjection, payed it to the true Successor to *Alfred's* Power and Glory, is so plain, that I wonder any question should be made of it.

CHAP.

C H A P. XVII.

An account of the Scotch Homage, from Edward the elder, Inclusive, to the Reign of King Edgar.

THO' hitherto, I have been obliged to travel, in path, which the preconceived Opinions, of Learned Moderns, had made, yet more dark and thorny, than they left them by the Saxon Writers, who very unwillingly drop'd any thing, of the true British Story: Now we come into a frequented Path, which 'tis strange, any unbiassed Man should miss.

Edward, a Saxon Historian, received by Sir T. C. Saxe, Edward's Successor of the Monarchy, Son of the abovementioned King, is Crowned, *ipse stemmate regali electus*, he being elected by the great Men, as he was of the Royal Stem.

*Ad. hoc
Rot. Clas.
29. E. I.
m. 10. d.* The wise King *Edward I.* and his Council, having been my warrant, for going so far backward, I may well still pursue the path they left traced out, for Generations to come.

Having omitted instances of the Subjection of those, who inhabit the part now called *Scotland*, from King *Arthur's* time, till the full restitution of all the rights of this Imperial Crown, under *Edward the elder*, they say,

Scot-

Scotorum, Cumbrior, &c. He had the Kings of
Strugwallorum Reges, sibi the Cumbrians, the Scots,
Ianquam Superiori Do- and the Strugwylsh Sub-
mino Subiectos habuit. ject to him as to their
Superior Lord.

Not to heap Authorities upon a matter wherein our antient Authors carefully follow the *Sanon Chronicle*, I shall content my self with that, and the *Scotch Register of Mails*.

The *Sanon Chronicle*, speaking of his Marching, with his Victorious Army to *Pencland*, in *Darby-shire*, says,

And him to faderes & to blasforde Scotta cyn-
 ing, & calle Scotta theod, & Regnwald, & Eadul-
 fus suns & calle tha tho on Northymbrum bugeatb,
 together ge Englisce, ge Danisce, ge Northmen ge
 other, eac Stræcedweala cyning, & calle Stræced
 Wællas.

As all these chose him, for *Father and Lord*, the King, as well as People; 'tis evident, that the Kings did Homage at the least, for their Kingdoms, and the People Swore Allegiance.

But 'tis observable, that, to that very Day, the *Stræced-Welsh*, who were the Cumbrians, as has appear'd from *Erbetwerd*, had a King of their own; but the Homage don by the King of Scots, and the Allegiance Sworn by his People, was without any relation to Cumberland, or any other part within the English, or Danish limits, which took in all *Pictland*.

N

This

This removes all colour, from the Possession the Scots have had of *Cumberland*, as if that were the first ground of *Fudal Homage*, to the *Crown of England*.

p. 100.

Sir T. C. says, the *Scots* always pretended a *Right to Cumberland*; and there he would have it thought, that their *Kings Submitted to pay Homage*, for the sake of quiet possession; yet that he may seem to yield more, than he was in strictness obliged to; he afterwards owns the *Scots*, did always owe *Homage for Cumberland*.

p. 293.

p. 393.
No King
of C.

But leaving them to find a *Scotch Prince of Cumberland* of that time; lets see what their Chronicle of *Malros* says of this Submission.

Cron. de
Malros
De An.

920. Cum
tota gente
sua Pece-
runt homi-

" *Dovenald*, the Son of *Constantin*, King of the " *Scots*, with all his Nation, and *Reinold* the " King of the *Danes*, inhabiting *Northumber-*

" *land*, and King *Sibtric*, did *Homage to King Edward*.

That Chronicle, soon after calls *Sibtric*,

King of the *Northumbrians*; but having mentioned a King of the *Danes*, who was beyond dispute, possessed of the greatest part of the *Northumbrian Kingdom*; the other part was certainly under a *Welsh King*.

Sir T. C.
P. 47.

Upon this occasion, it may be some diversion, to observe how Sir T. C. exposes himself; while he thinks to run down all that ever conveyed to us, the *History of things passed*.

" This, says he, must be confessed, that almost all of those, who wrote the English History, till within this 100 Years, were " *Monks*,

" Monks, and followed whatever they found in
 " former Histories, or MS. left they should derive
 " from the Honour of their Country, so that
 " they made it a matter of Religion, to vary in the
 " least from them. As for example, let *Florence*
 " of *Worcester*, be supposed the first who wrote
 " of this *Homage* and *Falty*; for I believe
 " he is the very first, whom our Neighbours
 " can produce, *William of Malmesbury* and
 " *Henry of Huntington*, who were almost Contem-
 " temporaries followed him, as did also *Roger*
 " *Hoveden*, *Matthew of Paris*, *Thomas Walsing-*
 " *ham* and *Masbow* of *Westminster*, the first
 " leading his Followers into an Error; as we
 " see among Cattle, that if one break over
 " the Ditch, the rest follow, and conceive,
 " that they may lawfully do so, when they
 " have the Credit of their Predecessors, to Sup-
 " port them. To this may be added, that
 " they Discourse of things, which not only
 " hapned before they were Born; but at a
 " much greater distance of time, when mean-
 " while, they have nothing to make good their
 " Point. For what is it, which others then,
 " and they now, may not *Forge*, concerning
 " things which were done many Ages before?
 " If as we say in Court, they produce no other
 " cause of knowledg, but *bearsay*, and *deceitful*
 " *Fame*, which grows as it runs, and of a Flie
 " becomes an Elephant: Moreover, in those
 " Writings of the Monks, there appears a *migh-*
 " *ty Ignorance* of our Affairs; and seeing they
 " do not so much as know the Names of our
 " Kings, they can far less be acquainted with
 " their Actions. In the Catalogues of the

" Kings of Scotland, there's neither *Iresius* nor
" *Rinaldus* to be found, but those *Monks* write,
" that both of them performed *Homage* to the
" King of England.

Sibrie and *Iris*, being plainly the same, and the Son of *Eadulf*, *Florence of Worcester*, and the rest followed the *Saxon Chronicle*, to which *Florence* often refers; but Sir *Thomas Craig*'s imputation of Ignorance, to our Historians, turns upon himself, and argues how little the *Scotch Writers* are to be relied on, who pretend that the *Scots* were then possessed of any of those parts, within the now English Bounds; and shews how they are put to it, to stave off the proofs of the Homage due for the Kingdom of *Scotland*, when they would make late invented Catalogues of Kings, and Traditions sprung up, since that Kingdom has been Transplanted from *Ireland*, to ballance express Authorities of the Times; in which, as Sir *Thomas Craig* owns, the later Writers made it matter of Religion, to vary in the least, from what they found in former Histories and MS.

Cron. de Mailros,
An. 926.
Adjectis suo imperio.

But one would think this is put beyond Possibility of cavil, since one of the express Authorities, is the *Chronicle of Mailros*, to which they must be beholden for the truest Catalogue of their Kings, residing either in *Britain*, or *Ireland*.

To proceed from *Edward the elder*, to his Son and Successor *Atbelstan*, he, according to the *Scotch Chronicle*, upon the Death of *Sibrie*, added the Kingdom of the North-anbym-

anhymbriani, to his Empire, Gufreich; Siðri's Son, being driven out.

Then mentioning *Athelstan's* Conquering and putting to Flight *Constantine*, King of the Scots, and other Kings, 'tis added.

Qui pacem ab eo petentes,
firmatum cum Sacramento
foedus cum eo popegerunt.

Who begging Peace
of him, made a
League confirmed by
Oath.

That this was an Oath of Fidelity to him, as Superior Lord, according to the former recognitions of the Scotch Nation, no Man can question.

And this alone, were ground enough for *Rot. Claus.* believing King Edward the first, when he af. 29. E. I. sured the Pope, that *Athelstan* his predecessor, had constituted, that *Constantine* King of Scotland, to Reign under him.

I could heap Authorities to confirm this, but shall content my self with the Saxon Historian *Ethelward*, the Register of *Durham*, and some Charters, of many to the like purpose.

Ethelward, speaking of King *Athelstan's* Victory over the *Danes*, adds *Ethelw. f.* 482.

Nec non colla subdunt
Scoti, pariterq; Picti; uno
Solidantur Britanidis ar-
va.

And also the Scots submit, and in like manner the *Picts*; the Fields of Britain are consolidated in one.

Sir T. C. This is one of the Historians, to whom Sir
P. 39. Thomas Craig himself appeals. The Register of
the Church of Durham, says

a Præd. Monarcha Ethelstanus Ludwallum Regem wallanorum & Constantium Regem Scotorum cedere regnis coegit, quos tamen non multo post misericordia motu Secundum antiquum Statum sub se constituit regnato-

The said Monarch, Ethelstan compelled Ludwal King of the Wallanes, and Constantius King of Scots, to quit their Kingdoms; whom however not long after, being mov'd with Compassion, he appointed to Reign under him, according to their Ancient State.

This King of the Wallanes, who is named before the King of the Scots was plainly the King of the Straed-Welsh, of which Cumberland, was the head, or Seat of Power.

And the Constituting them to be Kings under him, was but according to the ancient State of Subjection to that Imperial Crown, of which Ethelstan was rightfully Possessed.

b That Register goes farther, as to the King of the Scots, that he gave his Son, to the King of England, as an Hostage, and Swore Fidelity to him.

(a) Mon. i. vol. f. 40. Ex. Hist. Dun. ss. in Bib. Bodleiana. (b) Vid. Sir T. C. p. 204. His weak defens, upon the Word *Deditio*, or *Surrender*, used by some Authors.

In the Register of *Abington*, a Charter, ac-
cording to the bombast of that time, is said Regist. in
to be granted, "in the 52 Year, since that Bib. Cor.
" glorious King of the *Saxons* had Royally f. 18. b.
" Governed most Nobly, and the third Year
" after, by the sweet benevolence of the Cre-
" ator doing wonders, he had authentically
" received the Government of the Sceptral rod
" of the *Northumbrians* and the *Cumbrians*.
Au. 930.

Being thus possessed of the whole Power of
Britain, he Subscribes that *Charter*.

"I *Asbelstan*, King and Ruler of all *Britain*,
" and by God's Grace, Governor of the rest
" of the Provinces.

This Charter agrees exactly with the *Saxon Chronicle*, which places the expulsion of the King of the *Northumbrians*, in the Year 917. An. 927. The Charter shews, that then there was a King of the *Cumbrians*, wholly distinct from the *Scots*; the Victory over them, according to the *Chronicle*, was not till the Year 934.

But the *Chronicle of Mailros*, following some other account of time, makes *Constantine* King of the *Scots*, to have been overcome, in the Year 926, whom it agrees to have been one of the Kings.

*Qui pacem ab eo poten-
tes, firmatum Sacra-
mento foedus cum eo papa-
gerunt.*

Who Begging peace
of *Asbelstan*, made a
league with him, con-
firmed by Oath.

This being an Oath, given by Conquered
Princes, was an Oath of Subjection, or *Huge*

N 4 Homage;

Homage; and this was not upon the account of any additional grant, which if there had been any, would certainly have been mentioned in that *Scotch Register*; and therefore was manifestly, upon a new investiture, with the Kingdom of *Scotland*, which had been forfeited for Rebellion, against the Superior Lord of the Fee.

Before this was now granted out, *Ethelwred*, who cannot be denied to have been fully apprized of the truth of the Fact, assures us, that the whole Fee was *Consolidated* under the *Monarch of Britain*.

And all other Kings within the *Island*, according to the *Register of Durham*, were *Constituted* by him, as his *Viceroy's*: Sir *Thomas Craig* therefore was very unadvised, in affirming, that the principal *bings* of the Controversy, turns upon *Abelstan*.

" He freely grants, that the King of the
" Scots paid *Homage* to *Abelstan*; but then says
" he, the point in controversy, must now be,
" whether the same was performed for the
" Kingdom of *Scotland*, which until that time,
" was *Free*, or for those Provinces, which he
" received from *Abelstan*, or had enjoyed in
" *England* before.

As he durst not trust the Question, without an unfair clog upon it; he begs the Question, of the supposed former Freedom of *Scotland*, the contrary to which has appeared above. And he begs it to be believed upon his Credit, that the History is plain in it self; that *Abelstan* having overcome the Prince of *Scots*, took from him the Provinces of *Cumberland*,

Sir. T. C.
p. 188.

p. 198.

berland, Northumberland and Westmoreland, but could not restore Northumberland at that time, because it was possessed by the Danes.

That this is perfect Fiction, is evident; for,

I. The Saxon Chronicle, and all our English ancient Histories, agree that none of those parts, were in the Hands of the Scots, before Athelstan's Victory; and therefore could not have been restored to them.

II. From the Year 914, to the end of Athelstan's Reign, they evidently continued in the same, or like condition, excepting the small time, that they continued in Athelstan's hands, undisposed of, till he granted Investiture to the several Princes; and particularly to the King of the Scots, of his then narrow Bounds, distinct from the whole Northumbrian Kingdom, possessed by the English, Danes, and other Northern Men; within which Kingdom, was part of the Dominion of the King of the Strangled Welsh, who had Cumberland, with the Stile of King of the Cumbrians.

Cron. Sam.
sup.

III. The Histories of the Times are positive that Edmond, not Athelstan, gave Cumberland to Malcolm the Scot.

IV. That this must have been so, may appear, upon comparing the Saxon Chronicle, with that of Mailros; for as the Saxon Chronicle shews, that Athelstan Dyed in the Year 937; that of Mailros, shews that Malcolm was not King, till the Year 943; nor had Cumberland till two Years after,

An. 943. after, when *Edmond* Conquered that Land, and *cemandavit* put it out, under the terms of *Homage*, to King *Malcolm*.

p. 210. Having *Polydore* on his side, Sir T. C. thinks, he is to be justified, in charging our Historians with *Ignorance*, *Rumors*, and *Malice*; in ascribing to *Edmond*, what he will have, but a repetition of *Atelstan's* Victory.

Atelstan, having by the Year 934, fully restored the Crown, to the possession of its antient Right of Superiority, and direct Domination over all the Kings within the Island; justly asserted, and published his Title in his Stile.

Mon. r. In one of his Charters, without addition, vol. f. 839. which might seem to lessen his Stile, he uses An. 937. that of *King* of all *Britain*.

In another.

Bib. Cot. "King and Chieftain of the whole King-
Reg. Ab. "dom of Albion.

In an other.

Cart. Orig. "Basileos, or Emperor of the English, and
in Bib. "equally Rector of the whole British World.
Cot. In an other.

"King of the English, and *Curiagnus*, or
"Governor of all *Britain*.

Then Subscribes, *King* of all *Britain*.

That this was not a vain assumption of his, appears by a Charter of King *Edgar*, who says of his Predecessor *Atelstan*.

Rot. Cart. *Primus Regum Ang-*
5 E. 2. m. lor. *Nationes qua Bri-*
12. n. 25. *tannian incolunt fibi ar-*
G 3 E. 3. *mis Subegit.*
m. 10. n.
23.

He the first of the Kings of the English, brought under him by Arms, the Nations which inhabit *Britain*.
From

(a) Bib.
(b) E.
E. R.

From whence 'tis not to be inferred, that he was the first, who brought under the *Scots*; for that, as appears above, his Father *Edward* had done, tho' 'tis not so plain, that all *Wales* had been subdued by him.

The right to the entire Monarchy, which *Athelstan* was in full possession of, his Successor *Edmund* kept undiminished.

Tho' E. I. in his Letter to the Pope, passing over *Edmund's* Reign, the Writer of the Life of St. *Dunstan*, says of him, " *Athelstan* being Dead, his Brother *Edmund*, Imperij Monarchiam Suscepit," it took upon him the Monarchy of the Empire.

In a Charter of his, he is Stiled
(b) King of the English, and other Nations,
Inhabiting round about.

In an other.

(c) King of the English, and Rector and Governor, of the rest of the Nations round about.

The Saxon Chronicle calls him "Lord of *De An.*
the English, Protector of the Magy, which 942.
generally is taken for Kindred; but there
must be meant of Neighbouring Nations or
Kings, and the doer of Famous deeds.

It shews that in the Year 944, he subdued
the *Northumbrians*, and drove out two Kings,
Anlaf, the Son of *Sibric*, and *Reginald*, the Son
of *Gutbefrib*; whom no Man will believe to
have been *Scots*. *An. 944.*

(a) Bib. Cot. Vitellius vita S. D. per Osbernus Dob.

(b) Evid. Eccles. Cant. inter Scriptores decem, f. 278.
Ex Regist. Ab. (c) Mon. i. Vol. f. 15.

An. 945. In the next Year, he *efer-bergode*, over-run with his Army, all *Cumberland*, and *bit let* did let, not give it to *Eal Malcolm* King of *Scots*, on condition to be his *Midwyrhta*, or *Rad Knight*, both on Sea and on Land.

*One that
was to go, or
ride along
with him.*

This is the first time, that the *Homage* and *Allegiance* due from any Body in those parts, expressly required, Sea, as well as *Land Service*.

But 'tis a Strange conclusion, that is made, as if no *Land Service* was due before, because both were then required: Or that this, if it lay upon the King of *Scots*, by reason of *Cumberland*, and upon the People there, exempted him, as King of *Scotland*, and that People, from all former Duty.

Besides, to take away all possible subterfuge, under this new Grant of *Cumberland*, the very next Year, after it had been granted, the immediate Successor *Edred*, united all the *Northumbrian* Kingdom, to the *Crown of England*; and yet the *Scots* immediately gave Oaths to him, to do what he would have him.

Cron. Sax. This being so long, before the *Scots* have any Historian, who has laboured to cover the Obligation of *Homage* and *Allegiance*, under which that Prince and People lay; 'tis not to be wondred, that among them, *Cumberland* should pass for one of the Counties, which their imaginary Kings were possessed of 300 Years before Christ.

Since, not only our Historians of the times, but Charters, are express, that there were Kings of the *Cumbrians*, before ever a King of *Scotland* had right there, and that, as those Kings were under our *Monarchs*; upon Expelling them, it was granted by *Edmund* to *Malcolm*, and

and all the *Scots* Swore Allegiance, after *Edred* had taken the *Northumbrian Kingdom* into his own Hands; what can the *Bishop* of C. and other Sir T. C.'s admirers say, to justify Sir T. C. his Assertion, that there was never any King of P. 393. *Cumberland*, but only the eldelt Son of *Scotland*, was called Prince of *Cumberland*?

I desire it may not be forgot, that the very next Year after *Cumberland* was first under the Government of the *Scots*, all the *Northumbrian Kingdom*, and *Pictland* in particular, was held as united to the Kingdom of *England*; and therefore we must come farther down, to look for the ground of the King of *Scotland's Claim to Lodeney*, now the three *Lotbiens*, which I shall soon find for them. But as to *Northumberland* and *Westmerland*, I doubt there must be a farther search downwards.

I shall not stop here, to observe several Grants of Lands, made by *King Edmund*, reserving nothing but *Homage*, one of which is to his faithful *Vassal*, for his faithful Obedience, or Service, with express mention of Tenure. An. 9.

To his Successor in the English Monarchy, *Edred*, as *Edward the 1st.* and his Chronicle held, "the *Scots* submitted without War, and Swore due Fidelity to him; one *Iric* being appointed King over them.

This appointment was plainly by *Edred*. *Cron. Sax.*
This was the very next Year after *Edmund* An. 946.
had given *Cumberland* to *Malcolm*: As this was part of the *Northumbrian Kingdom*, it must be thought that *Edred*, who re-united that Kingdom to the Crown of *England*, had it in its full extent, for certain, without regard to any Land within those Bounds; the whole Kingdom

dom of the *Scots*, submitted to *Edred's* Monarchy ; for the *Saxon Chronicle* tells us, that he had Reduced all *Northumberland*, the Land of the *Northumbrians*, to *Geatbealde*, him he reduced to his Empire or sway, and *Scotus* him *abbas sealdan* that *bie woldan eal*, that *be woldes*, "The *Scots* gave him Oaths, that they would, all *that he would*.

Which was Allegiance with a witness.

An. 949.

The *Northumbrians* being fond of *Danish Kings*, or at least of Kings from among themselves, upon *Anlaf's* return after he had Abdicated, received him again for King ; then that People turned him out again, and took *Irie* the Son of *Harold* ; who according to the Authorities, which Satisfied *E. I.* and his Council, had that Kingdom of *Edred's* Gift.

An. 952.

Yet in 954, they drove out *Irie*, and then *Edred* took that Kingdom into his own Hand. And thus it was re united to the Crown of England.

Ethelward, says of that King

*Ethelw. c. Cui Northymbrij Subj-
7. de Regi- ciuntur cuncti, nec non Sco-
mine Ead- ti juramenta confirmant,
red Regis. immutabilemq; fidem.*

To whom all the *Northumbrians* are subjected, and also the *Scots* confirm, or renew their Oaths, and immutable Faith, or Fidelity.

Accordingly the *Saxon Chronicle* says, the *Scots* him *abbas sealdan*, Sealed him Oaths, some as copies, Sworon, as others, that they *would all that be wold*. But the true reading seems to be *Sealdan*, relating to Charters, Testifying their Subjection.

De An. 946.

But

But the Scots had then no part of it within their Kingdom, not so much as *Pictland*.

As the State of the Fact evinces, that *Eadred* was truly *Monarch of all Britain*; his Style was accordingly.

King and Chieftain of all Albion.

I find a b Charter of his, wherein, he styles himself, "King of the English and Governor and Rector of all the rest of the Nations round about."

This is a Grant of *Berisbiam* will to one *Ebel-gard*.

Meo fidelis Minister ac Militi, in sua voluntatis & donationis obsequio, satendo ac implendo patens ac promptus fuit. My faithful Officer and Soldier, who was ready and prompt, in confessing and performing the Obedience of his Will, and Gift, or Resignation, of himself.

This Land was given with Power, to leave to what Heir he would, without any obstacle, Free in all respects, except the *Expedition*, and repairs of *Forts* and *Bridges*.

No Man can deny but this *Knight* held of the King in Chief, by *Knights Service*, and his confession and performance of obedience, was *Homage*, upon being invested with that Fee.

Eadwig, Succeeded in the Year 955. In the next e Year, I find his Predecessor's Style continued in substance, with very small change of Words.

(a) Mon. i Vol. f. 842. *Primitius*. (b) *Charter College per Patricium Junium Bibliotecar. Regium. Scoto Britannum penes Autorem. De An. 947.* (c) Mon. 3. Vol. f. 120.

I Edwys, King of the Nations of Albion.

In an other Charter, he is Stiled King of the English, and of the People of all Nations of Albion.

In b an other, he has the very same Stile with Edred, *Rex & Primicerius totius Albionis.*

*Reg. Ab.
in Bib. Cor.
An. 956.*

In one of his Charters, his Stile is King of all Albion; this is said to be corroborated by Edgar Clito, the same Kings *gadulfus*, the Greek Word for Brother latinized.

In one of his Charters, he Grants Land *Cuidam e Homini meo*, to a certain Homager of mine. And several of his Grants infer *Homage.*

(a) Regist. Ab. Bib. Cot. Cland. B. 6. f. 39. *Cunctigem
narum Albionis popularum.* (b) Carr. Orig. in Bib.
Cor. An. 962. (c) Regist. Ab. vid. Sup. Osbornum Autorem
vita S. Dunstans Bib. Cot. Cleopart B. 12.

C H A P. XVIII.

*Large proof of the Superiority of the Crown
of England, and of the Feudal-Law, in
King Edgar's Reign.*

*Omnium
electione
ordinatus*

E dgar, in the Life time of *Edwin*, was King of the *Mercians*; and upon his Brother's Death, was chosen Monarch of the *Island*; an Author of, or very near the time, shews, that because his Brother acted very foolishly in the Government committed to him, he was universally Desereted by the *Mercians*, and Edgar set up, and afterwards ordained King, from, or by reason of the general *Election*; whereby that Author accounted him *totius Imperij Monarcha effectus*, made Monarch of the whole Empire.

They

They who believe our British Histories Fabulous, in all that they say of King Arthur, would think a lying Spirit possessed all the Authors, and even the Records, of King Edgar's Time.

His great Successor Edward I. dwells upon his Story, as if he proposed his example to animate him to the like pursuit of Glory. When, says he, Edgar King of England, made *Kinady*<sup>Rot. Clasif.
29 E. L.</sup> King of the Scots, and *Malcolm* King of the Cumbrians, *Makkus* King of a great many Islands, and five other under Kings, *Dunewald*, &c. to Row him over the River *Debe*; he is reported to say, *his Successors, would glory, that they were Kings of the English; since they enjoyed such a Pre-rogative, as to have the Power of so many Kings Subject to them.*

The Saxon Chronicle says of him.

Cron. Sax.

" He conciliated Honour to God, and Lov'd
" God's Law, and consulted the Peace of his Peo-
" ple, the best of all the Kings that were before
" him, within the memory of Man: Moreover
" God so assisted him, that *Kings* and *Earls* dili-
" gently Obeyed him, and followed his Orders
" in whatever he would; with out Battle he Go-
" verned all things at his pleasure.

The Writer of the Life of St. Dunstan, says of King Edgar, that immediately upon his being Elected and Ordained,

*Cepit passim improbos
opprimere justos quoq; &
modestos puro pectore dili-
gere, Reges atq; Tyrannos
arumquaq; sibi subjecere.*

He began every where *Osbernus*
to opprels, or beat ^{sup.} down the Wicked; sin-
cerely to Love the Just
and Modest; to Sub-
ject to him Kings and
Tyrants, in all places
round about.

O

Sir

Sir T. C. Sir T. C. agrees, that the Continuer of Bede's History says, that *Kennadus* King of the Scots, and *Malcolm*, King of *Cumberland*, did bind themselves to *Edgar* by a perpetual Oath; but would have this Oath of Allegiance to pass for nothing, since Homage is not named.

A short Chronicle of the *Anglo Saxon* Kings of great antiquity, says of *Edgar*, to whom eight Kings, viz. a *Kynod* King of the Scots, and *Malcolm* King of the *Cumbrians*, and *Maccus* of very many Islands, and five more were Subject.

In one of his Charters he is Stiled.

b *Basileus*, or *Monarch*, of all *Britain*, and Subscribes *Basileus* of all *Albion*.

I could produce many more of his Charters, with the like Stile; but can not omit referring to a Charter more at large, than is proper here, which I had occasion to Cite, in proving the dependency of *Ireland*, upon the Imperial Crown of *England*, long before the time of *Henry II.*

There c *Edgar* calls himself, "King of the English, and Emperor and Lord of all the Kings of the Island, which lye about Britain, and all the Nations that are included in it.

And he Subscribes, King of the English, and Emperor of, or over the Kings of the Nations.

In another he says, he, "under the Heavenly King, presideth over the Kingdoms of Great Britain, and Subscribes, *Basileus*, or *Emperor*, of all *Albion*.

(a) Bib. Cor. Damitian, A. 8. *Cui octo Reges, Scil. Kynodus Rex Scotor. & Malcolmus Rex Cumbror, &c.* (b) Rot. Cart. 8 E. II. m. 20. n. 37. per Ab. & Conv. De Thorney, An. 973, & 5 E. 2. m. 12. n. 23. (c) *Vid. The History and Reasons of the Dependency of Ireland, &c.* ed. An. 1698. p. 15. (d) *Ingulf.* f. 302. b. An. 970. In

In another, he Styles himself *Basileus*, or Emperor of all *Albion*, and also of the Neighbouring Kings.

In one ^a of his Charters he Styles himself King of all Britain, which is Subscribed by *Kinedius*; or *Kinedy*, King of Albany, and *Mascius*, or *Macius*, Archpriate.

I find an other ^b Charter of this great King's; wherein he Styles himself, " *Basileus*, or *Emperor* of the beloved Island of *Albion*; enjoying in quiet Peace, the Scepters of the Scots, the Cumbrians, and the Britons, and of all Regions every where about. The Seventh, whc Subscribes as Duke, and recognizes this Title, is *Malcolm*.

This very *Malcolm*; who Subscribes here, as one of the Earls, Subscribes another Charter as King of the Cumbrians; which will put an end to the Imagination, as if there was no King of the Cumbrians, in, or near those Times; but that the eldest Son of the King of Scots, was always ^c Prince of Cumberland.

The Original ^d Charter now to be seen, follows in these Words.

In nomine Sta. & individua Trin. Ego Edgarus Rex & Basileus totius Angliae, admonitus & Sta. Dorob. ecclesie antistitis Dan stani precibus sapientis exortatus, red-

In the Name of the Holy and undivided Trinity, I Edgar, King and Emperor of all England, being often extorted, by the admonition and entreaty of

(a) Mon. i. Vol. f. 17. An. 971. (b) Cart. Antiq. in Turri Lond. B. n. 11. (c) Vid. Sir. T. C. p. 199. Whom the unlearned English Writers, call King of Cumberland. (d) Vid. Cart. Orig. in Bib. Cor.

do & St. & Dorob. Eccles. &
Monachis ib. Deo Servientibus
in purâ elemos. Port.
& villam de Sandwich,
eisdem Mon. aliam abla-
tam, cum omnibus liber-
tatis & Consuet. Regijs
ad Sand. Port. quæ ego
aliquando habui, ex urâq;
parte aquæ, cunscunq;
terra binc vel inde fuerit.
Confirmo eis omnes Man-
siones quas habent in villa
Sandwich, quæ illis colla-
tæ sunt in purâ & per-
petua Eleemosina fidelibus.
Unde volo ut nullus ibi-
dem babeat aliquid jus,
nisi tantum Ministri Nos-
tri Dorobernij. Quicunq;
banc meam largifluam
Munificentiam interrum-
pere aut violare præsump-
serit, indignationem do-
mina nostra Maria, &
eot. omnium qui in Dorob.
Eccles. requiescant Senti-
ant, nisi ante mortem emen-
dati fuerint.

Ever shall presume to interrupt, or violate this my large Munificence, let them feel the indignation of our Lady Mary, and of all those who rest in the Church of Canterbury, unless they make amends before their Death:

Ego Edgars Rex to-
tius Anglia, codicillo meo

Dunstan Prelate of the
Holy Church of Can-
terbury; Restore and
Grant, to the Holy
Church of Canterbury,
and the Monks there,
Serving in pure al-
moign, the Port and
Town of Sandwich, of
old, taken from them,
with all Liberties and
Royal Customs, belong-
ing to Sandwich, which
I, or any of my Prede-
cessors, at any time had,
on both sides of the
Water, whosoever the
Land be on this side, or
that. I confirm to them
the Houses which they
have in the Town of
Sandwich, which were
bestowed on them by
the Faithful, in pure and
perpetual almoign. Where-
fore I will, that no body
have any right there,
except only our Officers
of Canterbury: Who-

I Edgar King of all
England, have with my
sigillum

*signum Sta. Crucis propriæ
manu apposui.*

*Ego Kinach Rex Scoto-
rum, Subscripti.*

*Ego Maccus Rex Insula-
rum, vidi.*

*Ego Dunstan Dorob. Arcb.
Subscripti.*

*Ego Ethelwoldus Winton.
Antistes, consensi.*

*Ego Malcolm Rex Cumb.
Subscripti.*

*Ego Dufnal vidi
Ego Oskitellus, Ebor.
Arch. Subs.*

*Ego Osualdus Wig. E.p.
Ego Kenenwardus Ab.
Subscripti.*

*Ego Jacob Subregulus
Signum posui.*

*Ego Inkil Subregulus
Subscripti.*

*Ego Siferdi Subscri. S.
crucis apposui in festo Pen-
tecostes in Civ. ad Aedi-
manni.*

This Charter being pregnant with many con-
siderable matters, I cannot but touch upon them.

I. Besides other undoubted evidences of its
being an Original, that is, an Exemplification of
that which first passed, and was Registered in
the King's Court; one may observe the true
mark of the simplicity of the time, in threat-
ning

own Hand, set the sign
of the Cross to my Co-
diciſ.

*I Kinach King of the
Scots, have Subscribed.*

*I Maccus, King of the
Islands, saw it.*

*I Dunstan Arch. bishop of
Canterbury have Sub-
scribed.*

*I Ethelwold Bishop of
Winchester have Consent.*

*I Malcolm, King of the
Cumbrians have Subscrib.*

I Dufnal saw it.

*I Oskitil Arch. bish. of
York, have Subscribed.*

I Oswald, B. of Worſt.

*I Abbot Kenenward
have Subscribed.*

*I Jacob, an under King,
have put my Mark.*

*I Inkil, an under King,
have Subscribed.*

*I Siferdi Subscribing,
have put to it the Sign
of the Cross, on the
Feast of Pentecost in the
City at Aediamanni.*

ning the Violators with the Indignation of the Virgin Mary, and the Saints who Rest in the Church of Canterbury.

II. Here is a strong proof of the great antiquity of Tenures. This Town having of Old been granted to the Monks in Frankalmoign.

III. Tho' they held in Frankalmoign ; all the Land on both sides the Water, from of Old, was held of them, and they had a Royalty, and regal Services from the owners.

IV. This which was a Borough, and represented in the Great Councils, then and long before, held from of old of the Church : And of it self, were enough to answer that false and base Treatise of Cities and Boroughs, which Dr. Brady durst not, in his Life time, trust in the Hands of any, but such as he believed would flavishly lick up his Spittle, but is now recommended by the Gazetteer.

Indeed by chance, I formerly gained an opportunity, to Transcribe so much as I found needful, to animadvert upon, which Animadversions, with full proof of the Rights of Cities and Boroughs in the Saxon times, perhaps may soon see the Light.

V. To Silence all Dispute, whether the eldest Son of the King of Scotland, was of right Prince of Cumberland ; Malcolm was King of Cumberland while an other was King of Scotland.

VI. Tho' another was King of Cumberland, without any relation to the Crown of Scotland, the King of Scotland attended in King Edgar's Court, among the rest of his Homagers.

VII. That they all were there as Homagers, is more apparent, in that it was at Whitsuntide, when *de more*, or from ancient Custom, from King Arthur's time, the King's Barons, or Homagers, used to

to meet in his Court, for hearing Causes, and advising in State Matters.

VIII. The place where this Court was held, was *Aedemannis*, or *Acemannis*, in the Saxon Chronicle *Acemoneſcaſters*, the *Rath* where that King held a Feast at *Whitsuntide*, in the Year 973. *Vid. Cron. Sax. An. 973.*

From thence the King went to *Laegeceastræ*, which the Publisher of the Chronicle takes to be *Westcæſter*, but with Mr. Luyd, is *Warric*, the City of the *Legions*. Thither the Chronicle says, six Kings came, and a League being made, all promised to Act together with him, by *Sea and Land*.

This was doing *Homage*, or engaging to be *Liege-men*, which the King of *Scotland* and the King of the *Cumbrians* and others, if they were none of those six, effectually performed, in giving their attendance, and concurring with the King in one of the Acts of that Court, where the Charter above passed.

But to put this beyond all controversy, the Register of *Maitros*, where the Scotch Antiquaries do not pretend to correct the Cotton MS, since Printed, agreeing with the Saxon Chronicle in the very Year 973, mentions that King's then second Solemn Coronation, and says, "whom eight under Kings met, viz. *Kineth King of the Scots*, *Malcolm King of the Cumbrians*, *Macens* of very many Isles, and five more *Dufual*, &c. as he had required them; and Swore that they would be Faithful to, and assist him, by *Land and by Sea*.

If this was not *Liege-homage*, I would gladly know what more proper Term ought to be given it; but as the dispute is not about Words, but things, if it be said, this was in a strict Sense to be called an *Oath of Fidelity*, or *Allegiance*, I shall not stand for a Word, since an *Oath of Allegi-*

Allegiance is of farther import, than bare Feudal Homage.

Tho' the *Federal Law* was here long before the *Saxon Monarchy*, the *Feudal Terms*, supposed to have been brought in by *W. I.* occur oftner in King *Edgar's* time, than before, and are so very plain that tis wonderful Learned Men should overlook them.

If Dr. *Hicks*, and others, will pretend to set aside all Charters before the time of *W. I.* as spurious, because of *Feudal Words*, I will undertake to find them work enough. No Man surely will go about to blemish *Sulcard's Collection of Charters*; yet in one of them King *Edgar* confirms former Grants to *Westminster*, and adds of his own, in a Council held there, with his Son *Edward*, *Archbishop Dunstan*, and all his *Bishops*, and *Barons*.

*Bib. Cor.
Faustina
A. 3. f. 7.
Cart. Ca-
nob.
Westm. u-
niverfis
Episcopis
& Baroni-
bus meis.*

That these *Barons* were all *Homagers* to him, I could prove at large, but may refer to the Judgment above, of the Compiler of the first part of the Register of *Abingdon*, upon one of King *Alfred's Charters*.

Since, therefore, it is manifest, that the *King of Scots*, and the *King of the Cumbrians*, and others, were of the number of *Edgar's Barons*, as such did Service in attending him at his Court, had submitted to him as their *Lord*, and engaged to assist him in his Wars, which they confirmed with their *Oaths*, it must be agreed that they were *Homagers* at the least.

But in truth, this was but *Liege-homage*, it being the Prerogative of the Crown, to demand an Oath of Fidelity of all its *Homagers*; whereas other *Lords of Dependentfeuds*, were to have *Homage* without Oath, at the doing the *Homage*.

C H A P.

C H A P. XIX.

*Of the Continuance of the Homage from
King Edgar's to Cnute's time; and the full
Demonstration of the Right of Superiority
and direct Dominion in his Reign.*

THAT the Right to the Homage of the Kings ^{Vid. Cart.} of Scotland, and of the then distinct Orig. in King of Cumberland, was lost by Edgar's Successors, Edward, * Ethelred, and Edmund Ironside, Bib. Cot. His Stile Rex totius Insulae. cannot be pretended.

Therefore it must needs continue in the Crown of this Kingdom till Cnute the Dane.

Angul-Sexna. In another, Basilius or Emperor of all Britain, (Rot. Cart. 5 E. 3. m. 32. n. 85.) In another, His Stile is Governing the Monarchy of all Albion. Then he Subscribes King of the English. (ib. m. 10. n. 17.)

According to the Saxon Chronicle, he came An. 1017, to the whole Kingdom of England in the Year 1017. But according to Sir T. C's way of Arguing against the Continuance of the Right to the Normans, Cnute could not have this Coming in, as some will have it, by Conquest.

I need not stay to shew my Authority, that he was Receiv'd upon a good Saxon Title; but it's enough here that the English soon Rector ^{Bib. Cot.} the Crown to the Saxon Royal Family; having Cleopit. made a Law that no Dane should Succeed after D. Cronica the last of his Sons that Reignt'd here. But whether the Submission to Cnute were freely with Brutus ad. E. 3. Apres le mort Hardin, &c. les Comtes & Barons de terre se Assemblerent, &c.

regard to his Claim of Right , or by Force,
the quiet Possession of the Crown of England,
carryed with it all it's Appendages.

Righton, *Besides, Knigbtton tells us Cnute Celebrated a Par-*
Cul. 2318. liament at Oxford, where the English and the Danes
agreed to observe the Laws of King Edgar. Yet
I must not suffer Sir T. C. to go away with the
Triumph of his Assertion, that Cnute ' Never
Sir T. C. ' Claim'd any Superiority over Scotland, and that
P. 233. most of his Letters are extant, where he
Stiles himself only King of Denmark, England,
Norway, and part of Sweden.

Sir T. C.'s Inference here is one of the fairest
that he makes, being grounded upon all which
might have occurred to him of that King's Stile.

Yet his Admirers may, if they please, see
a Charter of Cnute to St. Edmund's Bury, where,
as Successor in the English Monarchy, he used this
Stile.

I (a) Cnute King of all Albion, and very many
other Nations.

(b) Ead. per Inspex.
Rot. Cart. 4 S. 3.
M. 24.
N. 58.
(c) Mon. 1 Vol.
f. 276.

(b) In another, He Stiles himself King of
the Island of Albion, and very many other Na-
tions.

In another,

Basilius (c) or Emperor of the whole English
Nation, and very many others.

Whatever some are oblig'd to maintain, that
they may help the Sacred Pedigree of the Scotch
Monarchy ; in Cnute's time they had three Kings
Saxon. at once, who all became Homagers or Subjects
An. 1031. to him : for upon his going into Scotland King

* Cron. de Mailros de eod. *Malcolm, him to Beatb, obey'd him ; and two*
other Kings Maelbaeth, or Macbeth, and
Jemare.

This * Maelbaeth may very well have been
the

the *Macbeth*, who was sole King in the year 1054; when he was succeeded by *Malcolm* the 1st, call'd *Cannmore*. But as *Macbeth* is left out of the Descent from *Fergus* to King *Charles* the II. as exhibited by the Lord *Tarbat*; so are both the other Kings; and consequently *Malcolm* did not derive his title to the Crown from any body <sup>vid. the
Genalogy
in Sir
G. M.</sup> last S^tl'd, but from the Election of the *Stuarts* of Scotland.

Sir *Thomas Craig* says,

' That there were three Kings of Scotland at *sir T. C.* that time, when *Cnute* undertook the Expedi- p. 231.
' tion, is not very probable; their Names not
' being in the Catalogues of our Kings, nor
' never so much as heard of by us.'

He says *Matthew of Westminster* advisedly forbears Names, but owns they are in *Huntingdon*, and *Caradocus a Welch Historian*. This is full Proof that their pretended Catalogues of Scotch Kings here are meer Inventions: and is but one Circumstance of many, evincing that their Histories, which are all in comparison Modern, ought to have no manner of Credit.

I find that the Laws which were made; or rather Chiefly declar'd in *Cnute's* time, were by Authority of such National Assemblies, as concluded all People then within the Island. Accordingly he held a Parliament at *Winchester*, to Consult of the State of the Realm, for suppressing Vice, and increasing Virtue,

Bib. Cor.
Titus,
A. 27,

Congregatis Primatis "The Nobility of all
bis totius Angliae & Da- "England and Daneland
nia, "being Assembled.



I chuse to render *Dacia Danoland*, believing that it related to such parts of this Island, as had long been in the Hands of the Danes ; and might by consent of the Great Council be then under Danish Generals.

Bib. Cot.
Claud.
D. 2.

From the time he was settled in his Kingdom, it may be a question, whether the Scots had any King in all those Parts. However there is positive Authority, that in his time all Albany was Govern'd by a Danish or Saxon Earl, *Dimæse*, or *Dimoc*, his *Heretoe* or General; and *Galloway*, which then was accounted no Part of Albany or Scotland, by *Earl Warr*. As may be seen before an ancient Transcript of his Laws.

C H A P. XX.

The Homage done for the Kingdom of Scotland, upon the Grant of Lodeny in the time of Edward the Confessor : And Evidence supporting the Charter of it, which our Historiographer caused to be Engraven.

NOt finding the Bounds above alter'd in the time of *Cnute*, or his two Sons *Harold* and *Hardicnate*; I shall take them as such till the 13th Year of the Confessor's Reign, when I find Earl *Seward* Earl of the Entire Kingdom of the *Northumbrians*; which, as will appear, was not divided till his Death.

The

The Chronicle of (a) Mailros owns that (a) Anno: Earl Edward fought their King Macbeth, and having put him to flight, Constituted Malcolm, as King Edward had Commanded.

Hence it appears that Sir T. C. was not aware what he offered when he said, (b) " If ever any King of the Scots was Invested by the King of England, we shall not deny but that the Kingdom of Scotland, owes the fealty of a Client, and Homage to the King of England; and that the King of the Scots shall be accounted his Vassal and Clyens; and bound to all Services as such.

If every of the Crown, by one of the King's Earls, by order of the King was not an Investiture, Sir T. C.'s Admirers must Coin a new Notion of Investiture, to Suit his blunders about Homage.

According to the Confessor's Law, this was properly an Investiture by or from the Sovereign Lord of the Fee: for that is express, that the Universal whole Land, and all the Islands as far as Norway and Denmark, "belong to the Crown of this Kingdom, and are of the Appendages and Dignities of the King, and made one Monarchy; and one Kingdom, formerly of Britain, and then of the English."

But 'tis to be remember'd, that at this Investiture, nothing pass'd but the old Kingdom of the Picts and Scots, without Pictland: Which tho' it had some time been Possess'd by the Picts, was then in the Hands of the English, as will Most evidently appear.

Neither is there any thing of Cumberland, Northumberland, or Westmorland,

1054. Vid. Cart. Orig. in Bib. Cot.

where Si-ward is the first Duke that Sub-scribes that King's Charter.

(b) Sir T. C. p.
63.

Archaion.
cap. de Regis officio & de jure & appendiciis coronæ Regni Britanniaæ.

As to Cumberland, they will not, I take it, shew that the Scots had ever any Title to it, or indeed, that any Scot was King, Prince, or Earl of it since that Malcolm who was King there in the time of King Edgar. That Malcolm was dead when Edward the Confessor gave Investiture of the Kingdom of Scotland to the other Malcolm, whom Edward the 1st. and his Council call Son of the King of the Cumbres; and what I have produced of the Confessor's Law justifies Their adding, that Scotland was Granted to bold of our King Edward; for 'twas no more than the implication, of Law, whether express'd or no at the time of the Investiture.

As the Historians, seldom gave more than the principal Transactions; it must be agreed that the generality of them thought the Investiture was as much as they need take notice of, to shew the Crown of England's asserting its right over the Crown of Scotland; and yet an Original Charter of Homage for the Kingdom of Scotland being yet to be seen under Seal; I shall here set it down, with concurring Testimony to Support it. The Record as English'd by Mr. Ridpath is as follows.

Pref. to
Sir T. C.
of Hand:

" Malcolm King of Scots and of the Adjacent Isles, to all Christians to whom these Present Letters shall come, Greeting, as well to Danes and English, as to Scots. Be it Known to you that we and Edward our eldest Son and Heir, Earl of Carrick and Rothsay, have Recogniz'd, that we hold Our Kingdom of Scotland and the Adjacent Isles, of Our most excellent Lord Edward, Son to Ethelred, late King of England, Lige Lord of Scotland, and the

" the adjacent Isles, by Liege Homage and Fealty,
 " as our Predecessors and Progenitors are very
 " well known to have Recognized and done,
 " as manifestly appears to us by the ancient Records
 " of the Crown: And therefore by direct
 " Law, we be come your Liege-men, O our
 " most Serene Lord Edward, Son of Ethel-
 " red, King of England, and Liege Lord of Scot-
 " land and the adjacent Isles: and we shall
 " bear Liege Fealty to you and to your Heirs,
 " during our Lives, to Live and die with you
 " against all Men, as your Faithful Liege Sub-
 " jects. So Help us God and the Holy Judg-
 " ment of God.

" In witness whereof, we have caused our
 " Seal to be put to these Presents, for us and
 " our Son aforesaid at York, the 5th. day of
 " June, and the 9th. Year of our Reign, in
 " the Parliament of our Liege Lord aforesaid held
 " there; by the Consent, and with the Advice
 " of Margaret our Consort, Daughter of Ed-
 " ward, Son to Edmund Ironside; Edgar Atbeling,
 " Brother to our said Consort, and many others
 " of the Nobility of our Kingdom aforesaid.

Upon the first view of this, 'tis observable,
 1. That this was in a Parliament at York, where,
 and not further within the Kingdom, the same
 King afterwards insisted that he was to do his
Homage.

2. Here is a Notification of the doing this
Homage in the Name of all his Subjects; to
Danes and *English*, as well as *Scots*; which ar-
 gues that he had then some part, which before
 had been in the possession of *Danes* and *English*:
 and if we find what that was, and when Granted,
 it must be agreed, that it will give Light to this
 Matter.

3. The Homage here is *Lige*, and mixed with that Allegiance, which, as has appeared, was from the Beginning due to the Crown of England; from all People within the Island of Britain, or Albion.

S. Hist. L. p. 281. The Learned Prelate, who gives Authority to the Reflections upon Mr. Rimer, for causing this Charter to be Engraven, Says in a Volume of My Lord Longville's, is *homagium factum, Edwardo fil. Etbelredi. A. D. 1043.*

" This, says his Lordship, is the very same " with that Published by Mr. Rimer, and will afford new Matter for the Antiquaries to wrangle about; for the date of this without more ado, proves it could not be made by King Malcolm III. Though it might be to Edward the Confessor.

I must beg his Lordship's Pardon, if I put him in mind, among other different Computations of the difference between the Evangelical, As *Florence of Worcester* has it, and the *Dyonian*, which is just 22 Years; the consideration of which will remove all Objections against either of the Charters.

In the Account of the Register of *Mailros*, Though King Edward gave Investiture to this Malcolm, in the Year, 1054. either because it was two Years after, before he was fully recognized, Mackbeth being yet alive, or before the Letters Patents of *Livery* or *Investiture* were sent from England; His Reign was Dated but from the Year 1056. Mr. Ridpath makes it in April 1057. But we may well follow the Register of *Mailros* and the Charter of Homage now in dispute. Add then nine Years to the first of Malcolm's Reign, out of this Deduct 22. which

Vid. Bib.

Cot. 7.

A. 7. where

Edward is

said to

have con-

stituted

Malcolm

King. An.

1035. and

K. Edward

to have

died An.

1047.

An. 1056

1065

22

1043

1055

which is the difference between the Received Accounts; and the Homage falls exactly within the Year 1043. according to the Lord Longwill's Charter.

Thus we have a demonstrative Evidence of the truth of both Records; one as an Original, the other as an Exemplification. And yet if the Year had been mistaken in the Exemplification, or the Year of our Lord added, when the Ninth was in the Body; it could be but an Error in the Clerk, which would not vitiate even the Exemplification. But this is not all, we have a Proof from an Ancient Historian, who chiefly followed one of the Chaplains of W. I. and himself lived in the time of H. I. which falls in with these as one Tally with another.

Nor yet is this all, but as will appear, in its place, 'tis supported by an incontestable Charter of one of Malcolm's Successors.

I shall here only mention part of a Conference between the same Malcolm and Robert; who was by his Brother W. II. sent to Malcolm, to persuade him to do the accustomed Homage.

*Ord. Vit. lis. F. 70 r.
D. A. 1092*

This he scrupled doing to William the younger Brother, But said,

"I confess, that when King Edward gave me his grand Neice Margaret to Wife, he bestowed upon me the County of Lodeny.

The now three Counties were then plainly accounted but as one Province.

But our Noble Prelate, and other Advocates for the Ancient Kingdom, may be like to say; what the Capital City Edinburgh, and all Lodeny bestowed upon the King of Scots as a new Grant? This is Forgery upon Forgery.

I must

I must by degrees prepare them to admit all the Light in this Matter: But this is one Argument how much some have been misled by an implicit Faith in Dr. Brady, who will have most of the *Northumbrian Kingdom* to have been left out of the *Great Survey*, because it was in the Hands of the *Scots*: When *Lodeny* alone was a Boon with which they rested satisfied in the *Confessor's Time*; and, as will appear, were far from making Encroachments in the time of his immediate Successor, the Victorious *W. I.*

But for farther Satisfaction in this Matter, I *Cron. Sax.* at present shall only refer to the *Saxon Chronicle*, *An. 1091.* which speaking of the very time, with the principal Circumstances of *Robert's Treaty with Malcolm*, to perswade him to do Homage to his Brother, says, *Malcolm went with his Forces out of Scotland into Lothene in England.*

The fixing this Point beyond Dispute, I shall respite till the proper time; and in the mean while shall consider the Efforts which have been made against *Malcolm's Charter of Homage*.

CHAP. XXI.

The Objections against Malcolm's Charter of Homage for the Kingdom of Scotland Considered, and Refuted.

Objec. 1. **T**H E Evidence that Homage was done by *Malcolm* for the *Kingdom of Scotland*, at least without Relation to any other Lands in *England* but *Lodeny*, being positive and clear; all unbiassed People will expect something very convincing to vacate such a Record as the Charter above.

Mr.

Mr. Ridpath's first Objection after produc- Object. 1.
cing the Charter is, that 'tis contrary to all the
Forms of Homage Recorded even in the English
Histories.

The Historians of those Ancient Times give no Form, but plainly intitiate, That our Monarchs exacted such Oaths, to assure themselves of the Fidelity of the Kings of the Scots, and other Subject Kings, as the circumstances of the Times required.

And Scotland being then first Erected into a Kingdom, with part of England Annexed to it; 'twas but fit that the Homage and Oath of Fidelity should be explicit for the Kingdom of Scotland, tho' as appears 'twas ever implied; the Land Possessed by the Scots, being an Appendix to the Crown of the Monarchy; though the ordinary Administration of the Government in those remote Parts, was in Kings of their own making, and unmaking: Not but that upon occasion, our Kings permitted them to Reign without Investiture from hence.

Another Objection is from the Title or Object. 2.
Stile of the then King of Scots, as if never any Pref. to St.
of the Kings of Scotland were styled, of the T. C.
Scots, and adjacent Isles.

What I have shewn before of Macius the Arch Pyrate, or King of very many Isles, who, 'tis probable, Maintain'd a Pictish Title; may satisfy any Man in the reason of that Stile's being assumed, from the time that the Monarch of this Island of Albion, instead of granting an Investiture of those Isles to any Descendant from Macius, gave them to the King of Scots: or permitted him to Possess them; without re-uniting them to the immediate Government of the Crown of the Monarchy.

'Tis

Answ.

Answ.

Objec. 3. 'Tis Objected with like assurance against the calling the King's Eldest Son Earl of Carric and Rothsay; when the Eldest Son of Scotland was, as is imagined, long before that time Entituled Prince of Cumberland.

Answ. As to the Title of Carric, that Carric was an ancient Earldom before John, the Son of Robert II. had it, appears above; and I question whether there are any such Records, and other Evidences in Scotland, as give a probable Account when that Earldom, or the Earldom of Rothsay first began: but as they admit the Feudal Law to have been with them before the time of W. I. 'tis likely that with them, as with us, there were hereditary Earldoms, and Baronies in the Saxon Times.

However, this Record that the King's Son had those Titles, is an Authority of much higher Nature than any Conjecture against it.

As to their Prince of Cumberland, let them shew one since Malcolm, who was King of Cumberland while another was King of Scots. But upon the Confessor's making Malcolm King of Scotland, Cumberland was plainly reunited to the Crown of England; that it might not be in danger of making a part of the Kingdom of Scotland.

Objec. 4. Another mighty Argument is, that there is no mention in this Homage of the Northern Counties, tho then Possessed by the Scots; which is said to be an Argument of its being a Forgery.

Answ. But I say this Charter is one strong Argument that no part of England but Ledney, which was agreed to be left under the Government of the Scots, was Possessed by them. Besides, the Course

Course of History to that time, and the occasion of a King of *Scots* having *English Honours* afterwards, make it very evident that no part of *England* but *Lodeny*, was then in the hands of the *Scots*.

Another Objection is against the use of the Object. 5. Word Parliament in the time of the *Confessor*, who had Resided in *France*.

But even Sir H. *Spelman*, who overlooked all the Evidences which his vast Reading had offered, of the Antiquity of Parliaments, as a true Representative of the whole Nation; has furnished an Instance of the Word Parliament in the *Saxon times*; applied to an Assembly of all that were Interested in managing the Affairs of an Abby.

But here comes the deadly stroke, that which proves this Homage to be a *Forgery beyond all Controversie*, is the alledged Consent of *Margaret, Queen of Scotland*, and *Prince Edward her Son*.

Whereas he says, all our Historians that he had met with agree, that she was not Married till she fled with her Brother out of *England* after the *Conquest*.

I will own that several Ancient Historians, speaking of *Edgar Athelin's* going into *Scotland*, mention his Sister's being Married to the King of the *Scots*, and some are positive that it was then; but others intimate nothing certain of the time of her Marrying, nor was it material to what they writ: and they who do name a time, speak of it in *Transitus*, by the bye.

But this cannot be of any weight to blast the Credit, not only of the Charter, but of Ord. *Vitellus*, who ended his History in the time of

*Vid. Sir. H.
Spelman's
Gloss Tit.
Parliam.*

of King Stephen, when he was an ancient Man, of great Integrity and Reputation, and had means of fully satisfying himself of the truth of so material a Passage, was that which I have cited out of him. Therefore notwithstanding the long Negative of Moderns, I may affirm with *Ordericus*, and for ought yet appears, with a good Record on my side; that the Confessor gave Margaret to the King of Scots, with the Noble Dowry of *Lodeny*.

But we have not yet done with Objections.

Objec. 7. Another, which Mr. Rhys ap had put before, as an Antidote against the Charter, is, that Edward I. in his Defence to Pope Boniface, made no mention of it to justify his Proceedings against the Scots.

Answe. It appears above, that he did urge what was much more material; that the King of Scots received his Crown of the Grant, or Investiture of the Confessor, which even Sir T. C. owns to carry Homage along with it as an inseparable incident.

Objec. 8. But then he says, R. I. Restored to W. I. King of Scotland, all the Monuments of Homage, either performed, or which had been said to be performed: and asks whether 'tis reasonable to suppose the Government of Scotland would have been so silly as to have neglected Demanding such an Authentick Record: or, that the Government of England would have broken the Publick Faith to have detained it?

Answe. Let any one look on that Charter of R. I. And they may see by the Witnesses that it was a Private Act of the Kings, for the sake of a little Money, when he was intent upon the Holy War: and as it was of no Effect to Pre-

judice

judice the Crown ; the Publick Faith was not concerned in it.

Besides, the words of the King's Charter are so ambiguous, that all besides the restoring the Castles of Roxborough and Berwic, was but putting a Feather into the Scotch King's Cap, of no real signification.

" Richard quits all Agreements and Covenants, which his Father had extorted by new Charters and Imprisonment : but so as the King of Scots perform entirely and fully, what ever Malcolm the King of Scot's Brother did, or of right was obliged to do, to Richard's Predecessors.

So that if the Kings of the Scots had been obliged to do Homage for their Kingdom to the King of England ; that Obligation was not intended to be lessen'd, nor was it within the Intention of the Charter, that any Evidence of the former right should be given up.

This appears evidently by the Clause which relates to the Restitution of Charters " we have Restored unto him *Ligeantias* (which Mr. Ridpath renders Allegiance, but the Subject Matter there shows it to be Tyes, or Obligations,) " Homages, and Charters, which Our Lord and Father extorted from him by his Captivity ; and if any other happen to be found or retain'd thro' forgetfulness , we Command that they shall be of no Effect.

'Tis much that he who Translated this Charter should not observe, that the Restitution is confin'd to such Obligations , Homages, and Charters, as H. II. had extorted ; but all Evidences of what was due and Pay'd to the Predecessors of R. I. and H. II. were to remain.

If there were any other Charters of Homage even of the time of H. 2. besides such as were Executed while the King of Scots was a Prisoner; such Charters were not within the intent of R. the 1st's Release.

And yet as it will appear, when we come to the Charter of the Homage done to H. 2. there were other Matters in it, from which the King of Scots might well be glad to have but the shew of a Discharge.

I am almost weary of trifling so long in Answering what has nothing in it.

Objec. 9.

Another Objection is, that it is not to be thought H. 8. would have omitted this in his Declaration of War against James the 1st. wherein he amiss'd all that could be said for the same.

Answ.

That he urg'd all that could be said, is only Mr. Ridpath's Opinion. However a Declaration of War, seldom descends to all particular Proofs; for that were to make an History instead of a Declaration.

Objec. 10.

Mr. Ridpath having as he supposes, evidently detected this of Forgery, concludes 'twas Forg'd in Queen Mary's Reign; because when fresh enquiry was made into the Pretensions of England to this Homage, in the time of E. VI. there's no mention of this Record, as appears, says he, by Dr. Burnet's History of the Reformation.

Answ.

This Objection argues want of that Sincerity which might have been expected; since having observ'd what is in the Appendix to the 2d. part of the History of the Reformation, he could not but take notice, that all the Evidences that were laid before E. 6. were not Transcribed, and put in the Appendix to the Bishop of Salisbury's admirable History, or pretended to be found by him. But

it appears from the Appendix that *Tonstal B. of Dunham*, being desir'd to give an account of what Evidences he had found in his Archives, refers to some, not particularly mention'd by him, of which he had sent Copies : And takes notice of another Charter owning *Homage* for the Kingdom, under the Seal of a King of Scotland, which as I shall shew is a full Confirmation of what Mr. Ridpath so strenuously denies, and might have convinced him, that there was no occasion to Counterfeit such a Charter as *Malcolm's* : Besides, the original Charter it self, and Exemplification with the *Lord Longville*, carry with them Demonstration of much greater Antiquity than *Queen Mary's Reign* : and yet that is as probable as any time, which can be assign'd for the suppos'd Forgery.

For so what end should a Single Evidence be Forg'd, when, as appears, all our Antient Histories, and our Laws, manifest notonly the ground of the Superiority of the Crown of England, but it has from Age to Age been acknowledg'd? And 'tis certain after so full Submission of Prince and People, as was in the time of E. 1st. besides what will appear in the Reigns of E. 3. and H. 6. *Vid. Inf.* There was no occasion for any Succeeding Monarch, or Officious Subject, to forge a single Evidence of *Homage* for the Kingdom of Scotland.

This may seem more than enough to answer all the Objections against the validity of this Memorable Record ; which yet will be farther supported by observing how the right to *Homage*, for the Kingdom of Scotland has been maintained by our Monarchs of the Norman Race, and acknowledg'd by the Scots, with the continu-

ance of the Dependency of the Crown of Scotland, or rather, annexation to the Crown of England.

C H A P. XXII.

Of the Homage done by Malcolm to W. I. and his Laws and Charters, manifesting the Superiority of the Crown of England: And demonstration that the Homage was for the Kingdom of Scotland, not for Northumberland, Cumberland, or Westmorland, or any Lands in England, but Lodeny.

When I come to consider the Nature of the Succession to the Imperial Crown of this Realm, I shall make it evident that W. I. was duly Invested with all its Rights; in the mean while I shall shew, that he did assert his Right over the Kingdom of Scotland, and that it was fully, and in form acknowledged.

Sir T. C. Sir T. C. says, Matthew Paris mentions a double Surrender made by Malcolm to the Conqueror, as he stiles W. I. but will have it that others do only take notice of one; which is but one of his usual mistakes: For there are very good ancient Authorities of two, if not three Surrenders.

The first was in the 2d, of King W's Reign, immediately after York had Surrendred to him.

Ordericus Vitalis speaking of that time has this Passage,

Tunc

loves E
by Ne
on the
Arms.

Tunc Arebillus potensissimus Nordenbumborum cum Rego concordiam fecit, eique filium suum ob fidem tradidit. Praesul quoque Dunelmensis Regis in gratiam accessit & pro Malcolmo Rego pacis mediator intervenit, & acceptas Conditiones in Scotiam detulit. Malcolmus autem licet ab Anglis requisitus fuerit & validam expeditionem in eorum auxilium facere paraverat, audita tamen legatione pacis quietuit, & cum Praesule Dunelmensis suos ovantes remisit per quos Gulielmo fidele obsequium juravit. Sic utiliter sibi consulae populoque suo multum placuit, quod pacem bello prae posuit. Non Scotica gens licet in praetorio aspera sit, otium tamen & quietem diligit, nollet a vicinius inquietari regnis Christianae Religionis plus quam armorum intenta studiis.

loves Ease and Quiet; and would not be disturb'd by Neighbour Kingdoms, being more intent upon the Study of the Christian Religion than of Arms.

Then Arebill, the most Powerful of those on the North of Humber made an Agreement with the King, and delivered his Son an Hostage. Also the Bishop of Durham obtained the King's Grace, and interposed as Mediator of Peace for Malcolm King of Scots, and carried into Scotland the Terms which were approved of. Malcolm, tho he were entreated by the English, and prepar'd to make a strong Expedition in Aid of them; yet an Offer of Peace being heard of, was quiet, and joyfully sent his Messengers with the Bishop of Durham, by whom he Swore Faithful Obedience. So he consulted his own Profit, and much pleased his People, because he preferred Peace before War. For the Scotch Nation, tho it be rough in Battle, yet

The Faithful Obedience, or Allegiance then Sworn by *Prony*, as it was pleasing to the People of *Scotland*, was evidently with their Consent; yet it appears by the Register of *Abington*, that the King of *Scots* did not long keep to his Solemn Engagement: mentioning a time of which I have no Note, it says,

Bib. Cor. Rex *Scotie* Malcol-
Claud. B.6. mus Subjectionem Regi
Regist Ab. W. eo tempore detre-
et abat. Quare coacto in
unum exercitu Rex fil.
suum Robertum ma-
jorem Natu *Scotiam*
sua vice transmisit, cum
quo & plures, &c. in Ang.
Primates, querum unus
Abbs Adelelmus, &c.

At that time *Mal-*
colm, King of *Scotland*
withdrew Subjection
from *King Wl.* Where-
fore his Army being
drawn together, the
King sent his Eldest
Son *Robert* in his stead:
with whom also went
several of the great
Men of the Kingdom
of *England*, of whom

one was Abbot *Adelelm*.

He was Abbot of *Abington* at that time, and as I remember, was Attended by twelve Knights,
who held of him by *Military Tenure*.

The Abbot having been there himself, his Service to the Crown by himself, and his Tenants obliged to such Service, as the performances were Recorded in the Earl-Marshal's Roll, could not possibly be any Fiction: because the Register would not be conclusive against the Crown, but might be falsified by the Marshal's Roll.

As therefore we may be certain that the Abbot was then with *Robert* in *Scotland*, we cannot reasonably doubt of the Fact, as Enter'd in the Register, which adds,

*Verum Ren ille Lo-
denis occurrerunt cum su-
is, pacis portus quam
praelati dedit. Perinde
ut Regno Angliae Prin-
cipatus Scottie Subactus
foret, obfides tribuitur*

But that King with his People, meeting in the *Lodenis*, chose rather to enter into an Agreement than to Fight. Therefore gave Hostages that the Principality of Scotland

should be Subject to the Kingdom of England.

The Homage could not be performed to any Body but the Person of the Lord; therefore Hostages were given for the performing that, in sign of the Subjection of the Principality of Scotland to the Kingdom of England.

That this was afterwards done in full Form, there are many Authorities.

* Bib. Cot.

Vitellius

A. 20.

Hunc lib.

*dedit frater Radulphus de Durham Priori Deo & Eccles. St. Mar.
& St. Oswini de Tinmouth.*

An * Ancient Manuscript belonging to the Priory of Timmousb has these Words,

*Rex Willielmus cum
navali grandi & equi-
stri exercitu, Scotiam ex-
pectans, omnia ceda &
incendio devastando. Cui
Ren Scotor. Malcol-
mus in loco qui dicitur
Abernithi occurrit & ho-
mo suus devenit.*

King William with a great Fleet and Army went into Scotland, wasting all things with Sword and Fire. To whom Malcolm, King of the Scots came in a place called *Abernithi*, and became his Man.

The Saxon Chronicle is express, that upon Chron. King William's going into Scotland, King Mal. Sax. de calme Agreed with him, gave him Hostages, and An. 1073. his Man was; which the Translator has Rendered Servant, but was evidently Homager.

Chron. de
Mairos. Their own Chronicle agrees in the very Year,
and says, King Malcolm meeting him in a place
called Abernithi, *bomo suis derenit*, became
his Man, or did him Homage. Ingulph of the ve-
ry time speaking of King William's going in
Northumbriam, into the Country on the North of
Humber, Says,

Pertransiens etiam tunc
& ultra progredens in-
clitus Rex Willielmus in
Scotiam, eam sibi Sub-
jexit, & Malcolmum
Regem ejus, sibi homa-
gium facere & fidelitatem
jurare Abernithi coegit

Also then the Re-
nowned King William
going through, and
advancing further in-
to Scotland, Subjected it
to him, and compelled
Malcolm its King to do
him Homage, and Swear
Fealty at Abernithi.

Vid. Bri-
ni Hist.
Scotica.
Nomenclo-
suram. s)

This place the Scots now called *Abernethy*, and
is the East Point of Strabern near *Dase*, and as
they say, in the *Pict's* time was the Royal Seat
of their Kingdom, and Metropolitan of their
Church.

Sr. T. C.
p. 270.

In a matter so plain, and of times, the History
of which admits of no Controversie, one
would think Sr. T. C. should fall to Evasions
and Descanting upon words, rather than to
downright Fiction. He tells us, " The terms
" were harder upon the Conqueror than the
" King of Scots, and that it may easily be in-
" ferred that the Scots were Superior in Arms,
" for the Conqueror demanding three Things.
" 1. That the English Exiles should be given
" up. 2. That the King of Scots should receive
" none. 3. That he should do Homage, as
" usual for *Cumberland*, *Northumberland*, and
Westmorland, Malcolm agreed only to the last.

with

With this he supposes, *William* the more readily took up, because, as he would have it thought, the Gallant *Seward*, Earl of *Northumberland* had joyned his Nephew *Malcolm*.

When 'tis certain that Earl *Seward* died in the Year 1055. in some Accounts, 1056. in others, the very Year that he, by Order of the Confessor gave Investiture of the Crown of Scotland to his Homager *Malcolm*. Chron. Saxon.

Indeed there was another *Seward*, whose Sir-name was *Bearn*, that fled into Scotland with *Edgar Atheling*.

But as Authorities are express, That *W. I.* Subjected the Kingdom of *Scotland* to him, 'tis demonstration that *Malcolm* did *Homage* for the Kingdom of *Scotland*.

Besides, the fiction, as it is all of a piece, labours with an Absurdity, as if King *William* demanded *Homage* for Countries, the Government of which he adjudged, or disposed of to others, being all but *Cumberland*, which was soon restored to the Crown of *England*, in his quiet possession; except that sometimes they were Infested with Depredations from the *Scots*.

Sir T.C.agrees that *Matthew Paris*says, *Malcolm* St. T. C. became the Conqueror's *Liege-man*: But then, as P. 271. he either did not, or would not seem to understand the Difference between *feudal* and *Liege Homage*, nor between *Homage* which was done, and *Fealty* sworn; he will have it that *Malcolm*'s becoming *W's Liege-man*, imports no more, than that he did him *Homage*.

Whereas Swearing to him as a *Liege-man* was an acknowledging him his *King*, and Superior over his *Kingdom*.

If any question could be upon that later Authority, 'tis very evident from the *Saxon Chronicle*, and *Ingulph*, and even their own Register of *Mailros*, which shews that *Malcolm* became *William's man*, without relation to any particular Lands.

That *Malcolm* did Homage without regard to any Country in *England*, and made no pretence to any at that time, but *Lodewy*, he himself afterwards own'd to *Wm's Son Robert*, when he came to persuade *Malcolm* to do Homage to his Brother *William the 2d*.

Ord. Vital. Then he confess'd that when the Confessor
Sal. 701. gave him *Margaret* to Wife, he also gave him
An. 1092. *Lodeng*.

After that he says,
Guilelmus Rex quod antecessor eius mihi dederat concessit, & me tibi praerogentio suo commendavit.

King *W.* confirm'd what his Ancestor had given me, and commended me to you his eldest Son.

Any Man who observes the use of *commendare* & *commendatio*, in *Domesday Book*, must needs think that according to this, *Malcolm*, either did Homage to King *W.* and his Son *Robert* by name, or, as is more likely, to *W.* and his Heirs. Accordingly *Malcolm* went upon the mistake as if *William* was not truly the Heir of the Crown, tho' *Robert* was the first in the Line. This shows that *E. I.* and his Council had good warrant to say,

William call'd the Bastard, King of England, the said Edward's Kinsman, took Homage from "Malcolm" as from his Man Subject to him.
 "The ground and right of this, as it was evident by the Confessor's Laws, so it is by the Laws of

*Rer. Clauſ.
ag. E. I.
Sup.*

of Wm. L those I mean of which there never was any question, the 5th. of the Print, but rather the first is this,

*Statuimus imprimitis
super Omnia unum Deum,
per totum Regnum Nostrum
venerari, unam fidem Christi semper inviolatam Confessari, pacem
& securitatem & Concordiam, Judicium, &
Justiciam, inter Anglos &
Normannos, & Francos:
& Britones Wallie &
Cornubie, Pictos & Sco-
tios Albanie, similiter in-
ter Francos, & Insulanos
Provinciarum & patri-
ae quae pertinent ad
Coronam & Dignita-
tem defensionem & ob-
servantiam, & Hono-
rem Regni Nostri, & in-
ter Omnes nobis Subjectos
per Universam Adonarebit-
am Regni Britanniarum, fir-
miter & inviolabiliter ob-
servari, ita quod nullus alii
foris faciat super fo-
rificaturam nostram pli-
nam.*

Lamb.

Archaion

f. 170, &c.

Lib. Rub.

in Scac.

*It might
easily be
shown that
the French
Laws ad-
ded to In-
gulf, were
not those
which In-
gulf refe-
red to.*

We enact in the first place above all things, that one God be Worshipp'd thro' Our Realm, one Faith be kept inviolable, Peace and Security and Concord, Judgment and Justice, between the English and Normans, French and Britons of Wales and Cornwall, the Pitts and Scots of Albany; in like manner between the French and Islanders of the Provinces and the Countries, which belong to the Crown and Dignity, the Defence and Observance and Honour of our Kingd'm, and between all Our Subjects throughout the whole Monarchy of the Kingdom of Britain, to be firmly and inviolably observ'd, so that no Man forfeitt to any other upon our full forfeiture.

Nothing can be more plain than that,
1. As in the time of the Confessor, so in VV's,
there was one entire Monarchy, which was the
Kingdom of Britain.
2. This

2. This *Monarchy* was not confined within the *Picts Wall*, or any part adjoyning to the *Picts* or *Scots*; but all the *Picts* and *Scots*, even in *Albany*, which is agreed to be all *Scotland*, were so far within the Government of the *English Monarch*, that he was not only to keep the Peace, but to do Justice among them.

3. The full Forfeitures of the Subjects, for Treason especially, within *Scotland*, were not to their immediate Prince, but to the head of the *Monarchy*.

Bib. Cor.
Claud.
Df. 12.

Suitably to this an Ancient Manuscript of the number of Provinces, Countries, and Islands, which of Right belong, and without doubt appertain to the Crown and Dignity of the Kingdom of Britain, among them places *Albania quæ modo Albany*, which is now *Scotia vocatur.* called *Scotland*.

The Author of the *Saxon Chronicle* of the time of *W. I.* who professes that he had seen him, says

*Scotland he him under He brought Scotland
thrade. under him.*

Chron. SAN. And according to this, *W. I.* in imitation of de A. 1086 the Style which his Ancestors used, as often as Mon. St. Vol. 1 f. 52. they thought fit to express what was contained in being King of the *English*, writes himself, By God's Providence, King of the *English*, and the rest of the Nations round about.

C H A P. XXII.

That in the time of W. I. the Scots had no part of England but Lodeny. The Objection from the large omissions out of the Great Survey removed.

I would gladly know what part of England besides *Lodeny*, was possessed by the *Scots*, when their King did Homage to *W. I.* Indeed before that they had some Possession of *Cumberland*, but as the circumstances above evince, that no Man could have it as King of the *Scots*; they cannot shew that a *Ses* was permitted to enjoy that Government as of Right, for any considerable time after the King of the *Cumbrians* had the Kingdom of *Scotland*.

Indeed Authors who could not but know the State of those Parts, admit that In the 4th. of *W. I.* the *Scots* were Possessed of the Government or Power of *Cumberland*, (a) but then they say, It was by Force, without Right, and that Force *Copatrie*, then Earl of the *Northumbrians*, Removed, and Restored the Possession to the Crown of *England*.

While there were Kings of the *Cumbers*, or rather, of the *breached Welsh*, the Kings either of the *Cumbers*, or those *Welsh*, were under the immediate Government of the Nor. *Northumbrian* Kings. Accordingly *Egfrid*, one of those Kings gave (b) *Lugabalia*, now *Carlisle*, the Cumbrian Bound on that side of the *Scots*, *minis*, *non* with fifteen Miles round about it, to the Church of *Durham*.

As no Barony can be shewn of *H. II's.* Reign, which was not a Barony before *W. I.* if a Ba-

rony An. 658.

B. PUN. f.

see. De A.

1070. &c.

Bib. Cot.

Cloud. D. 7.

Larga

Angl. His.

per Canon.

de Laner-

est in Com.

Northum-

briens.

Brat ee

tempore

Cumber-

land sub

Regis Mal-

colini Do-

minis, non

sed violen-

ter subacta.

(b) Mon. I.

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rony can be shewn in Cumberland of H. II. time, which could be no otherwise than as holding of the Crown of England, Cumberland whatever Kings it might have had, must needs be thought part of England.

*Llib. Rub. in
Bent.*

But *Thomas Muleron of Egremond*, in that County, then acknowledged to hold one Knights Fee by Barony. This was the Barony of Egremond, which afterwards came to the Piercy's; for I find a Recognizance of the time of H. VI. wherein Sir Thomas Piercy styles himself *Dominus Egremond*.

As to the Goverment of the County of Cumberland, W. I. having Removed Cosparric, who had it within his Norbanbymbrarian Earldom, gave it to *Ralph de Mescobines*.

*Gamb. Brit.
f. 648.*

He had with this the Barony of Westmerland, which appears to have been an hereditary Earldom under the Norbanbymbrarian King, and after under Earls whilst that Earldom was entire; it was held at five Knights Fees, or by the Service of five Knights; for in the Red Book in the Exchequer, of the time of H. II. I find,

*Llib. Rub. 5.
in Scac.*

Roger de Cliff jun. who Married the Eldest Daughter, and Heir of *Robert de Veters Ponte*, or Oldbridge, acknowledged to hold two Knights Fees and a half, for the Moity of the Barony of Westmerland.

*Mon. Vol. I.
f. 833.*

In an Account in the Monasticon of the ancient Lords of the Manors of Elreton and Tadewyks 'tis said,

*Ante temp.
W. I. Ba-
rari. &c.*

" Before the time of *William the Bastard's* coming into England, there was a certain entire Lord of the Manors of Elreton and Tadewyks, who was called *Simon the Son of Thorn*. In whose time *William Bastard the*

Con-

" Conqueror came ; which Simon had three Daughters and Heirs, Mary, Matild, and Cassandra
 " Which Mary was given and Married by the
 " Conqueror to one Humphry de Hastings, the Earl
 " of Westmerland, Tenant by Knights Service.

" And the said Humphry had with the said
 " Mary in Fee, all the Demesne, or rather,
 " Lordship of Egleton, with all Wards, Re-
 " liefs, Escheats, &c.

Militia
Comitis de
Westmer-
lenda, in
Hereditate
totum Do-
minium,
vid. Spel-
man's Chro.

Here though W. I. is called Conqueror, 'tis
 plainly in no other Sense than as he acquired
 the Possession of the Crown, taken from him
 by Usurpation ; but the Saxon Proprietors re-
 tained the Ancient Right & and the Lord of that
 Manor, in which there was no alteration of
 Property or Tenure, had Wardship, Relief and
 Escheat, from of Old.

This by a Marriage came into the Family of
 a Knight, holding of the Earl of Westmerland :
 But I suppose no Man will pretend, that the
 then Earl of Westmerland was the King of Scot-
 land. Nor can the Scots shew more for the
 County of Northumberland.

In that, as in Cumberland, and Westmerland, there
 were Baronies holding of the Crown of England ; Lib. Rub.
 particularly, I find the Barony of Morwick, of
 which the Wives of John de Bolemere, of John
 de Rosel, and Roger de Lomley, were Heirs. And
 Robert de Somervil held the Barony of Merley, in
 right of his Wife, for 2 Knights Fees.

in Sac.

I could shew several Tenants in Chief or Be-
 rons of that County ; but must not omit So- Lib. in
 mers, VV, de Mohun, and Richard de Monteacuto,
 or Montagu.

The

(a) Mon.
1 Vol.
f. 39.
An. 950.

(b) In-
gulph.
f. 510.
An. 1056.

(c) Wen-
dover, M's.
in Bib.
Cot.

(d) Cart.
Antiq. in
Turri
Lond.

Mon. Vol.
f. 42.

The (a) whole Northumbrian Kingdom came to the Crown, in Edred's time, he gave it to Earl Oulph, afterwards King Edgar joyn'd Olfæ with him ; this Siward held entire while he liv'd in the Confessor's time.

(b) After Siward's Death, the Confessor gave the Earldom of York to Tost, Brother to Harold.

(c) Wendorver, with whom Matthew Paris generally agrees, makes Tost Earl of the whole Northumbrian Kingdom.

That in part at least he was immediate Successor to (d) Siward, may appear by a Charter of William I. Granting Hemingworth to the Church of Durham, with all the Royalties ; with which the King himself, and before him Siward and Tost had enjoy'd it. Whatever was Tost's share, he was driven out by the People, who chose Earl Morcar in his room to part at least of the Northumbrian Earldom ; the other part was certainly enjoy'd by Morcar's Brother Edwin, upon whose forfeiture William I. granted away his Lands in Yorkshire, with all Knights Fees held of him.

The two Brothers having forfeited, the entire Northumbrian Earldom was not so much given the Saxon Earl Wulfbeof, as adjudg'd to him ; it being as the Historian shews, his right, both by Father and Mother.

He in the 4th of William 1st. Stiled himself Earl of all Northumbria, which was manifestly the old Northumbrian Kingdom : And therefore whatever Government any body else had in those parts ; 'twas all under him, till the 11th. of King William's Reign, when that great Earl was Attainted for High Treason, by the

Judg-

Judgment of his Peers in full Parliament ; where his interest was so great, that it was a Year before the King could get Judgment.

After his Death the Northumbrian Earldom was plainly canton'd out, but the Country was under English Earls before, in, and after the time of W. I.

Besides the constant Succession of the English Earls, that Northumberland, with the Country thereabouts, was in the hands of the English, in the 13th of W. I: there is a farther Proof ; for the Saxon Chronicle of that Year says, *Malcolm King of Scotland came into England, the Land of the English, and Gebergode wasted Northumbria, the Land of the Northumbrians, Otb bit come to Tine, till it come to Tine.*

Cron. Sax.
An. 1079.

But it shews that he immediately return'd, without leaving any Force there.

And immediately before the Survey, King W. An. 1085. having been threaten'd with an Invasion from Denmark, brought over a great Army from abroad, which he dispos'd in Garrisons, wherever there was occasion ; whereby he secured the Peace of his whole Monarchy.

(a) I find by an Historian of those parts, that Hugh the Son of Baldric was Sherif of Northumberland, in the 7th of W. I. and that appears to have been an (b) Hereditary Sherifwic : This Hugh Fitz Baldric continued his property to the time of the Survey, when he was one of that King's Barons : for in the great Survey I find Terra Hugonis fil. Baldrici, the Land of Hugh the Son of Baldric, which is the Common designation of tenure in Chief ; not but that some-

(a) Bid.
Cor. Clad.
D. 7.
Hist. per
Canon de
Lanercos. 8.
An 1703.
fil. Balde-
rici.

(b) Vice-
comes Nor-
thumbrie.
Vid. W.

A's Answ. to Chief. J. Herbert, the general Mistake of the Year Book of H. 7. A's 48, In relation to the Sherif of N.

(c) G. D. f.

times

Berk.
f. 60 b.

times the Survey shews that tho one Man is entered as Tenant in Chlef, the Right is in another: Thus to do Right to the Saxon Family of Spence under Terra Roberti de Oyle. I find,

Idem R. tenet unam Hidam quam Azor Dispensator T. R. tenuit. Hanc terram tenet idem Azor de Roberto, sed Homines de Hund. testificantur cum de Rege debere tenere, quia Rex W. apud Windesores reddidit, & breve suum inde dedit. Vero Rob. tenet minus justo, nemo enim vidit breve Regis, vel ex parte Regis Hominem qui cum inde secesserat.

The said Rob. Holds one Hide, which after King Edward's Dispensor Held. This Land the same Azor Holds of Rob. but the Men of the Hundred Witnes, that he ought to Hold of, the King, because the King restored it to him at Windsor, and gave him His Writ thereupon. But Rob. holds it unjustly, for no body saw the King's Writ, or any Man from the King, who gave him Seizin thereof.

Men who have a very imperfect Notion of *Domesday Book*, thinking they are warranted by the Historians of the times, to say that it contains an account of all the Lands within the Kingdom of England, as they were Held in, or about the 28th of W. I. and being told that most of the Parts here in question, are left out of the Survey, conclude it must have been, because they were Possessed by the Scots.

An. 1085.

The *Saxon Chronicle*, indeed, says, King W. held a great Council, and had grave Discourses with his *Vitan*, wise men of this Land, how it was *Geset*, *Improv'd*, or cultivated, and *mid whilcom Mannon*, with what Sort of Men up.

upon this tis said he sent Officers into every County, to cause enquiry how many Hundred Hides were in every County, and what Land and Castle the King had in the County, and what Yearly Rent he ought to Receive out of it.

*SancChroft.
P. 190.*

"Tis said afterwards, there was not one Hide of Land in the Kingdom of England, whose Possessor he did not know.

This admits of a very short Answer: That if it were true in a literal Sense, all the returns which were made from several parts of the Kingdom were never entr'd in *Domesday-book*, thro' carelessness, or some accident; for 'tis demonstrable that in the Survey now to be seen, great part of what all agree to have ever been within the Kingdom of England was omitted, and a Reason given for it, which may qualify the meaning of what the *Saxon Chronicle*, and the generality of Historians have, following that.

The Reason why 7 Hundreds of 12 G.D.F. 172.
are wholly omitted out of the great Survey is
thus given in the Survey it self. *Vice-
cestrescire.*

*In ipso Comitatu sunt
12 Hund. borum 7 ita
sunt quieti sicut Scira di-
cit, quod Vicecomes Nibil
babet in eis, ideo sicut dicit
in firmâ multum perdit*

In that County there are 12 Hundreds, 7 of these are so quiet, or free, as the Shire says, that the Sheriff has nothing in them, and therefore as he says, he loses much in his Farm.

Further it may be observ'd that the Historians say, the Survey was in imitation of the old Roll of *Winchester*, made by King *Alfred*, and this gives

Ingulph.
f 8.
Talem ro-
tulum &
multum si-
milem edi-
derat quon-
dam R.
Alfredus,
&c.

gives a plain account why *Alfred's Survey* could not be carried on to the time of *W. I.* in relation to most of what was within the *Northumbrian Kingdom*; that being in King *Alfred's* time in the Possession of the *Danes*, after whose times it's Kings and Earls Successively owed no other Service to the Crown of *England*, but *Homage*, with it's Incidents: And this they perform'd with their Men enfeoffed under them. Besides where *Feuds* are Entr'd in *Domesday-book*, 'tis evident to any Man, upon the most cursory View, that our Historians are mistaken in supposing that all the *Hides* which any Man Held, are mention'd,

Often 'tis said, Land was never *Hidated*, and the *Hundred* can give no account how many *Hides* it contain'd; which is often shewn to be by reason of the Military Service, which the King's or great Lord's *Homager* was oblig'd to perform.

This shews the judicious Antiquary Mr. *Camden* to have been in the right, in his Conjecture, why those Parts were left out of *Domesday-book*, *Quia pensionibus liberae*, because free from Payments or common prestations to the Crown.

C H A P. XXIII.

Of *Malcom's Treaty with Rob. W. II's* Elder Brother; acknowledging that he had done Homage before, without regard to any Lands in *England*, but *Lodeney*, Part of the Scotch Story and an unexceptionable Charter of one of *Malcolm's* Successors, acknowledging, and demonstrating the Right of Homage for the Kingdom of *Scotland*.

THO' I could not but touch above upon the Transaction at *W. II's* demand of *Homage*, as it drew on Confessions of what pass'd in the two

two former Reigns, I perswade my self a Translation of the account at large, will not be thought a tedious Repetition.

" At that time, says *Ordericus Vitalis, Mal-*
 " colm King of the Scots Rebell'd against the
 " King of the English, and deny'd the Service
 " due to him. Moreover King W. after , as *Ord. Vitalis*
 " we related above , he had made Peace in f. 700. D.
 " Normandy with his Brother Robert , and *A. 1092.*
 " had carryed him against Faithless
 " Traytors , who had Conspir'd against
 " their King ; gather'd together an Army of
 " all England , and March'd with it as far as
 " the great River, which in Scotch is call'd
 " *Watra* : But because the Passage was diffi-
 " cult he stay'd on the Bank. But the King of
 " the Scots sent to him by Messengers, Thus,
 " To you, King William ! I owe nothing but
 " Battle, if provoked by you with Injuries : But if
 " I see Robert, King William's eldest Son, I am
 " ready to perform to him what I owe.

" These things being heard, the King, by
 " the advice of his Wise-men, sent Duke Robert
 " with a few Souldiers cross the Water. And
 " the King of the Scots receiv'd him kindly,
 " and in a friendly manner kept him with him
 " three days: Then he carryed him to an high
 " Mountain, and from thence shewed him a
 " very great Army in a certain Plain. From
 " thence he led him between two Mountains
 " on another side, and shew'd him a great Ar-
 " my in another Field.

" Being, says he, thus environed with the
 " Forces of Scotland, I am ready to receive
 " your Brother, if he will venture to come over
 " the Water to me. I wish he would set upon
 " us, and try the sharpest of our Darts.

" I confess that King Edward, while he gave

(a) Lodo- " his Niece Margaret to Wife, (a) bestowed on
 nensem " me the Country of *Lodenv*.

Comitatum " Afterwards King W. (b) yeilded, or con-
 Donavit. " firm'd what his Ancestor had given me, and

(b) Conces- " (c) commended, or assign'd me *Homager* to you
 sit. " his eldest Son.

(c) Me tibi " Therefore I will confirm to you what
 commen- " I promis'd, but I promis'd and owe nothing
 davu. " to your Brother. No Man, as Christ says, can
 " serve two Masters. Robert answer'd, 'tis so as
 " you say, but things are alter'd, and by my
 " own agreement, Matters which had been
 " appointed have lost their former Force.

" Therefore now, O Renown'd King ! Take
 " my Advice , and come with me to my
 " Brother ; you will find with him Sweetnes
 " and affluenc of good, because he is nearer and
 " more powerful, and has greater plenty of
 " Riches.

" These things, therefore, being promis'd,
 " the King gave credit to him, and the Con-
 " ference being over, he was receuil'd to the
 " King.

" Then they dismiss'd their Forces, and went
 " together into England.

Some of our Historians tell us, that then our
 King carry'd it very haughtily to the King
 of the Scots, and would not see him, but di-
 rected that he should do his *Homage* where-ever
 out

our King should think fit to hold his Court ; but that the *King of Scots* insisted on it as the *ancient Custom*, that it ought to be done on the Confines of both Kingdoms. *Orderic*, who is so particular as to the main Matter, passes it over whether *Malcolm* actually did *Homage* to *W. II.* or no ; and mentions only his going into *England* with King *W.* and being kill'd in his return by the *Earl of Northumberland*.

But the *Saxon Chronicler*, who could not but know the Truth of what he Writ, tho' he in Substance confirms what *Orderic* mentions of the Treaty manag'd by *Robert*, shews that *Orderic* had not observ'd the distinction of times.

The *Saxon Chronicle* shews that the Conference was in year 1091, which makes no considerable difference. But then it is positive that *Edgar Atheling* joyn'd with *Robert* in perswading the *King of Scots* to comply ; and *Edgar Atheling*, as appears above, was Witness to *Malcolm's Charter* in the *Confessor's time*.

The *Saxon Chronicler* goes further, and says, they made an agreement between the two Kings, that *King Malcolm* should come to our King, and his man wearbs should be his man, that is, do him *Homage*. And pay him all the Obedience which he paid his Father.

And that mid athe gefornode, he confirm'd it with his Oath.

Here was *Liege Homage*, or Allegiance actually perform'd.

This being done without regard to any Lands in *England*, the *Chronicle* adds,

And King *W.* promis'd him whatever Land, or thing he Possesst under his Father.

At that time the King of the Scots return'd Home well satisfy'd.

An. 1092. The next Year King William went to Carlisle and Rebuilt, or rather Restor'd that City to 'its ancient State ; Built a Castle there, and remov'd Dolfin, who was the Prefect or Gouvernour. This being in the Confines of Cumberland, bordering upon the Scots, makes it Evident that Cumberland was then in the Hands of the English.

An. 1093. In the following Year, the King of the Scots sent to King W. desiring him to stand to the Terms upon which they had agreed.

But King W. citing him to his Court at Gloucester, sent him Hostages for his safe return ; and afterwards Edgar Atheling, and the Hostages conducted the King of Scots with great Honour to Gloucester, where King W. not Vouchsafing to speak to him, he went Home in discontent, and returning, enter'd Northumberland with an Army, which prov'd fatal to him.

Then the Scots chose Dufnal, Malcolm's Brother.

But Duncean, the Son, who had been kept an Hostage ever since Malcolm's doing Homage to Wiliam I. apply'd himself to W. the II. Swore Allegiance to him, and with his leave got together a Body of English and French, by whose Assistance he took the Kingdom from Dufnal, and tho' he was in Possession of the Throne could not keep it quietly, till he promis'd to bring no more English and French among them.

An. 1094. The next Year the Scots kill'd Duncean, as might seem in Sir T. C's sense, their King by

the Laws of God, Nature and Nations, and set up *Dufnal* again.

Their Divisions seem to have given quiet to the parts of England in their Neighbour-hood, and therefore Robert E. of the *Northbankymbrians*, thought himself in a Condition to withdraw his Allegiance from his Prince : For he refu'd to attend the King's Court, unless he, like the King of *Scots*, had Hostages for his safe return.

Which occasion'd Action in those parts, where the Earl was taken Prisoner.

Then the King issued his Precept, requiring all who held Lands of him, to attend at his *Christmas Court*, if they would have the Benefit of Peace, or the King's Protection.

Cron.
Saxon.

Dufnal, the King of the *Scots*, as he was truly the *Peoples King*, being preferr'd before *Malcolm's Sons*, thought his Dependance was only upon the *Scotch Nation*, and slighting the Protection, in which he might have been included, gave no attendance at the King's Court. But neither He nor his People got any thing by that ; for *Edgar Atheling* who had a regard to the Memory of his Sister *Margaret*, took that opportunity to obtain an Army from King *W.* to Restore the Possession of the *Scotch Throne* to his Sister's Son by *Malcolm*. Therefore, as the *Saxon Chronicle* has it; about *Malcolmus*, *Edgar Atheling*, the King helping him, went with an Army into *Scotland*, and Subdued that Land, by a Sharp Fight, and drove out *Dufnal*, and Consecrated his Cousin *Edgar*, who was the Son of King *Malcolm* and Queen *Margaret*, King there.

On that Cinges *Williamus Hellen*, to hold of King *William*.

An. 1097.

I shall now produce a Charter of that King Edgar's owning the Homage for the Kingdom of Scotland, and confirming the Charter of Malcolm and the Substance of the Account given by Ordericus Vitalis.

M. 1 Vol.
F. 45.

In nomine Patris, & Fili, & Spiritus Sancti, Amen. Notum sit omnibus Christi Fidelibus praesentibus & futuris, quod ego Edgarus fil. Malcolmi, Regis Scotor. totam terram de Lodenies, & Regnum Scottie, dono Domini mei W. Anglorum Regis possidens Consilio preud. Domini mei Regis W. & fidelium, meorum pro animabus meis & Matris meis, nee non & Fratrum meor. Duncahn & Edward, & pro Salute Corporis mei & Anima mea, & pro omnibus Antecessis. meis Do Deo Omnipotenti, et Eccles. Dunelm, & Sancto Cuthberto, glorioso Pontifici, & W. Ep. et Monachis in ead. Eccles. Deo servientibus, & imperpet. servitarris, Mansionem de Berwic, & cum ista Mansione has

ever to Serve in that Church, the Manner of Berwic,

subscr.

In the Name of the Father, Son, and the Holy Ghost, Amen. Be it Known to all Christ's faithful People present and to come, that I Edgar Son of Malcolm, King of the Scots, Possessing all the Land of Lodenyes, and the Kingdom of Scotland by the Gift of W. King of the English, and by Paternal Inheritance, by the Counsel of my said Lord W. King of the English, and of my Faithful People, for the Souls of me and my Mother, and also of my Brothers Duncan and Edward, and for the Salvation of my Body and Soul, and for all my Ancestors, Give to God Almighty, and to the Church of Durham, and the Glorious Bishop St. Cuthbert, and to Bishop William, and to the Monks Serving, and for ever to Serve in that Church, the Manner of Berwic,

Subscr. Greidone, Lembole, Chistebale, Briegham, Ederham, Cirnesie, Hilton, Blacedre, Cynebrytham, Hotun, Rawynton, Parton, Fulgelden, Mordernston, Lamberton, aliam Lamberton, Hedrynton, Horsford, Upsetynton, & mansionem de Coldingham, & cum ipsa Mans. has Subsc.
M. Scil. Aldramby, Lumesdune, Riscum, Swinestan, Fernendum, Ektum, aliam Estum, Prenegeſt, Cramesmer, Hedinton.

Farnendum, Ektum, another Ektum, Prenegeſt, Cramesmere, Hedynton.

Hæ subscr. Man. Do
Deo & Sancto Cuthber-
to cum omnibus terris &
Silvis & aquis & ther-
monis & fracturis novi-
um, & omnibus consue-
tud. quas pertinent ad præd.
M. & quas Pater meus
babuit, quietas & solidas
secundum volunt. Dunelm.
Ep. in perpetuum dispo-
nend.

and with that Mannor,
these following Mannors,
Greidone, Lembole,
Chistebale, Briegham,
Ederham, Cirnesie,
Hilton, Blacedre, Cy-
nebrytham, Hotun,
Rawynton, Parton,
Fulgelden, Modern-
ston, Lamberton, ano-
ther Lamberton, He-
drynton, Fysewic, Hor-
ford, Upsetynton,
and the Manor of Cold-
ingham, and with that
Manor, these underwritten
Mannors, viz. Al-
dramby, Lumesdune,
Riscum, Swinestan,

another Ektum, Prenegeſt,
Cramesmere, Hedynton.

These underwritten
Mannors I give to God
and St. Cuthbert, with
all Lands and Woods,
and Waters and Tolls,
Wrecks, and all Cu-
stoms which belong to
the said Mannors, and
which my Father had,
quiet and entire, to
be freely disposed
for ever, according to
the Will of the Bishop
of Durham.

Signum

Signum Edgari, Signum Alex. Fratris sui, Signum Ligulfi fil. Memiavi.

Signum Gilberti fil. Dunecani.

Signum Oulari fil. Ogo. Signum Urtei Tudern, Signum Edgari Adeling. Hoc Cartasformatum est 4 Kal. Sept. Cemiterio. S. Cuthberti, presente Dno. Episcopo & Turgoto Priore & Anskitillo Proposito de Norham, & Agero de Cornford.

The Seal of Edgar, of Alex. his Brother, of Ligulf, the Son of Mimiavi, of Gilbert, the Son of Dunecan, of Oular, the Son of Ogo, of Urtei, the Son of Tudern, of Edgar Adeling. This Charter was made firm, or passed in St. Cuthbert's Churb-yard, in the 4th of September, in the Presence of Will. Bishop, and Turgot, Prior, and Anskitil, Baylif of Norham, and Ager of Cornford.

Appendix to the
2d. Part
of the Hi-
story of
the Refor-
mation.
N. 9. f. 106.

If Mr. Ridpath had been as much concerned for Truth, as for a mistaken point of Honour for his Nation, which need not use any borrowed Trophies; as he made an Objection against Malcolm's Charter, from its not being mentioned in Bishop Burnet's History of the Reformation; he would have been so ingenuous, as to own that Tompal, Bishop of Daresm, in the Reign of E. 6. having been writ to by the Council, to search all his old Registers, and ancient places where any thing could be found for the more clear declaring to the VVorld, the King's Majesty's Title to the Realm of Scotland; the Bishop in a Letter to the Lord Protector Somerset, assures him, he had found many Homages made by the Kings of the Scots to the Kings of England; which he say appears by the Copies he then sends.

He

He adds, " You shall also find in the said Copies, of the Gift of the Barony of Goldingham, made to the Church of Duresm by Edgar the King of the Scots, which Original is under the Seal, which I shew'd unto my Lord Maxwell at Duresm, in Presence of 2d, my Lord Protector.

" I find also a confirmation of the same Gift by King William Rufus in an Old Register, but not under Seal, the Copy whereof is here sent.

That the Monks of Durham had not Forged his Charter of Goldingham to colour Edward the 1st's. exercise of the right of direct Domination over Scotland, appears by a Charter of the 1st. of King John, which runs thus,

Sicut nos concessisse & confirmasse pura & perpetua elemosina Deo & Sancto Cudberto & Priori & Mon. ib. Deo &c. suas terras & dominias & Eccles. & Tenuis ad Priorat. Dunelm. certim. viz. int. al. Goldingham cum Eccles. e. usdem villae & omnibus ad eam pertinend. &c. insuper omnia que in Lodoneia possidet prouinciat. Mon. disponend. sicut carta Edgari Regis Scotor. testatur.

He
Selles in Lodony; to be disposed of at the Will of the Monks, as the Charter of Edgar, King of the Scots, Testifies,

Know that we have Rot. Cart
5. J. b. m.
13. n. 108.
Cart. Mon.
Dunelm.

Granted and Confirm'd in pure and perpetual Alms to God and St. Cudbert, and the Prior and Monks there serving God; their Lands and Tythes, Churches and Tenures, to the Priory of Durham belonging, viz. among other things, Goldingham, with the Church of the said Town, and all things thereto belonging, &c.

And moreover, all things which it possesses in Lodony; to be disposed of at the Will of the Monks, as the Charter of Edgar, King of the Scots, Testifies,

Which

Which is not only an Authentick Evidence of the Truth of King Edgar's Charter, but that *Lodeny* was in the *gsb.* of King *John*, accounted part of *England*; for it cannot be thought that the Monks would have been at the charge of taking a confirmation from the King of *England* of any Grant of Land in *Scotland*, granted by a King of the *Scots*.

If that were to be supposed, 'twould be a further Evidence of the direct Dominion of the Crown of *England*, than has hitherto been urged.

His Lordship of *Carlisle*, I perswade my self, would not have been so forward in censuring our *Historiographer* about *Malcolm's Charter* of Homage for the Kingdom of *Scotland*, if he had consulted those Original Charters to the *Abby of Coldingham*, and now kept in the *Dean and Chapter's Treasury of Durbam*, of which his Lordship unwarily exhibited a *List*; among the rest,

Charters of Edgar, King of the Scots, of Coldingham with the Appurtenances. Another of his, of Lands in *Lodeny*. - And a Charter of our King *William*, which was *William 2.* confirming King *Edgar's Grant*.

And thus we have the present Bishop of *Carlisle* attesting the Truth of what *Tonstal*, Bishop of *Durbam* in the time of *E. 6.* Appealed to the memory of the then Duke of *Somerset*, whether he himself had not seen under King *Edgar's Seal*.

This Charter being freed from all possible imputation of Forgery, I may well observe upon it.

A. 1127. A Charter of the Bishop of Durban, agreeing that the Church of Coldingham, as other Churches in Lodeney, shall be under the Arch-Bishop of St. Andrews.

*Scotch Hist
Lib. Append. p.
363. n. 7.*

Evidence
ter, but
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Scotland,
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1. That *Edgar Arbeling*, who was a Witness to the Father's Charter to the Confessor, is one who attests this Gift of *Edgar King of the Scots*, and the Declaration contained in it.

2. The King of the *Scots* and his Uncle, declare, that though the Nephew had an *Inhereditary Right* to the *Kingdom of Scotland*; yet it was the Gift of the King of *England*, as every *Investiture* is in the Feudal Law a renewal of the Gift, though 'tis of right upon performing the due Service.

3. That *Lodeny* is distinguished from the Kingdom of *Scotland* as a Fee by it self.

4. That without regard to that *Fee*, *Homage* was due for the Kingdom of *Scotland*.

5. That the King of the *Scots* then made no Pretence to either *Northumberland*, *Cumber-land*, or *Westmerland*.

6. It being well known that one Mr. *Anderson* has been sent from *Scotland* to *Durham*, to transcribe the Antiquities there relating to *Scotland*, and particularly to their King's Grant of *Coldingham*, in which *Homage* for the *Kingdom* is so fully owned, it is to be hoped, that, in concurrence with what I have laid together, may prevent all further denials in a matter so evident.

C H A P. XXIII.

A short View of the Transactions between England and Scotland, in the Reigns of H. 1st. and King Stephen, making it Evident, that the Homage done by the King of the Scots, to the Crown of England, has been for the Kingdom of Scotland; and not for the Counties of Northumberland, Cumberland, Westmerland, and Huntingdon, or either of them.

FOR the grounds of *Homage* invented by the Scots, and their Officious Friends among the Moderns, we must descend to the two next Reigns.

H. I. who was a very Wise and Learnd Prince, was far from parting with any of those Rights of his *Crown*, which no Man understood better than himself.

It must be agreed that *W. Rufus's* Reign having much lessn'd the Reputation of the Normans, and revived that affection to the Saxon and British Race of Kings, which had lain cover'd, and seem'd extinguish'd with the first *William's* Glory, *King Henry* was very desirous, by Marrying the Daughter of the Scotch Queen *Margaret*, *Edgar Atheling's* Sister, the more effectually to secure the Love of his People; and thereby gave them an earnest of his Resolution to be a true *English King*. *King Edward* the 1st. and his Council, say that on the Death of *Edgar King of the Scots*, *Alexander Succeeded*,

*Abduc.
Rot. Clauſ.
29. E. 1. 1*

Con-

Concessus Regis Angl. By the Concession
H. I. of H. I. King of Eng-
land.

The *Saxon Chronicle* shews that this Concession was a Grant or Investiture; For it says, Alexander, Brother to Edgar went to that Kingdom, as King *Henry Hime geuthe*, Gave or Granted him.

Chron.
Sax. Anna.
1105.

Alexander's Successor David, was such a Favorite with our Monks, that generally those Writers were more intent upon his Praise, than any Account of his Submission: Which yet will appear to have fallen from one of his great Admirers. Certain it is, he could never have been King of Scotland, without help from hence, where he attended at Tryals in the King's Court among the rest of the King's Barons.

Vid. Inf.

Ord. Vital.
f. 703.
An. 1130.

" While he Sat upon the Tryal of one of his
" Peers, Jeffery de Clinton, News was brought him
" that the Earl of Murray with Melcols, and
" 5000 Souldiers was enter'd Scotland, and en-
" deavour'd to Conquer the whole Country
" for himself.

Scotiam
intravit,
&c.

" But Edward the Son of Siward, who was
" Tribune or Earl of the Mercians under King
" Edward, and King David's Cousin, Rais'd
" an Army, and gave Check to the Enemy.

" Then David enter'd Murray, left without
" it's Defender and Lord, and by God's
" Affiance gaining the Dukedom of a spa-
" cious Country, was exalted above his An-
" cestors.

Where 'tis observable, that Murray was not till then accounted part of the Kingdom of Scotland. As David was the Queen of England's Brother,

*Ethelredus
Ab. Riev.
f. 368.*

*Tradente
Regis
Henrico.
Ingluf.
f. 13.
Ist. ed. f.
513.*

** Bib. Cot.
Claud.
D. 2.*

*Dedit Ho-
nor. de H.
cum M.
cogni sun-
que erat
Uxor priue
primi Si-
monis Sen-
t. Comit.
H. & N.
cum Guflo-
dia puerer.
fuer.*

Brother, the King gave him to Wife Matilda the Daughter of Earl *Waltbeof* and *Judith*, who was Neice to *William Ist*.

According to the account in some Historians the Earldom of *Northampton*, and Honour of *Huntingdon* were given *Waltbeof* in Frank-marriage, as a Dowry with *Judith*: For tho' *Waltbeof* was attainted and Executed, *Matilda* * his Eldest Daughter by *Judith*, carried Honours to *Silvanac* her first Husband, and afterwards to *David*.

When he first Married her, she had by *Silvanac* two Sons, whose Custody *H. 1st* committed to *David*, it wou'd seem as if they Dyed soon after, and *David's* Son was entitled to those Earldoms as Heir to his Mother.

But 'tis rather to be believ'd that the Earldom of *Northampton* was all that *W. 1st* gave *Waltbeof* in Frank-marriage, and the Right of this Earldom went to the Son of *Simon Silvanac*: and accordingly it does not appear that *David*, or any of his Successors pretended to be Earl of *Northampton*.

The Honour of *Huntingdon Waltbeof* had by Inheritance from his Father, the great Earl *Siward*: This I take from better Authority than any of our Historians.

I find in the Great Survey.

*G. D.
Hunedune.*

*In Burgo Hunedune
Siwardus Comes habuit
unam Mansionem cum
Soca & Saca, que modo
est quieta ab omni consue-
tuine; quam modo habet
Juditha Comitissa.*

In the Burrough of *Hunedune* Earl *Siward* had one Mansion or Manor, with the *Soc* and *Sac*, which now is quiet from all Custom; now Countess *Judith* has it.

She

She was the Widow of Earl Seward's Son Ing. 1st.
Walsbeof, and therefore tho' her Husband had Ed. 513.b.
forfeited, she had this as part of her Dower.

This *Mansion* with the Jurisdiction belonging
to it, was evidently the *Caput Baronie*, or Head
of that *Honour*, upon which account *Ingulf*
might have call'd her Husband *Silvanac* Earl
of *Huntingdon*, as well as *Northampton*. Upon
her Death it went neither to her Heir by *Sil-
vanac*, nor her Daughter by *Walsbeof*, who
Marry'd *David*, but falling to the Crown by
reason of *Walsbeof's Attainder*, might well be
granted out to *David* by *H. I.*

While that King liv'd, *David* and his People
seem to have observ'd their ancient *Allegiance* to
the *Crown of England*; but there being a Com-
petition for the *Crown of England*, and *David's*
nearest Relation kept out, he had the same
pretence to withdraw his *Homage* from King
Stephen, as his Father *Malcolm* from *W. 2.* and
might with like colour apply that *Text*, no man
can serve two Masters.

And yet a Zealous Abbot of that time con- Bib. Cot.
demns him for it, even in a Letter writ to *H. 2.* Julius A. 1.
and that notwithstanding *David's* having Sworn
Allegiance to *H. 1st.* and his Heirs. Comparing
his *David* to *David King of Israel*, "I confess
says the *Abbot*, our *David* also sin'd, not indeed
in soiling himself with any Vice, but admi-
nistring strength to the Cruelty of others
more than he ought.

" For after the death of *Henry*, when that
fierce Nation, and most inimical to *England*,
brought an Army into *England*, and inhu-
manly raging against Priests, and both Sexes,
exercis'd Cruelties against every Age, all which

" was done without his Will ; nay, against his
 " Orders ; yet he who might not, have declin'd
 " bringing them in, might, not have return'd
 " with them after experience had of them.

*Zelum
 iustitiae
 praten-
 dentes
 Sacramen-
 tum quod
 fecerat At-
 tendentes.*

" And we must with Tears confess that he
 " sinn'd. Others may excuse him, pretending
 " Zeal for Justice, attending to, or taking
 " Notice of the Oath which he had made ;
 " that he had taken Arms against a perfidious
 " People ; that he had attempted to bring back
 " the Kingdom to the Heirs of it, which the
 " Father had delegated to them ; Which the
 " Clergy and People had confirm'd with a jura-
 " tory Caution :

Nowithstanding *David* had joyned with the
 rest of King *Henry*'s Subjects in an Oath of Al-
 legiance, according to the then Settlement of the
 Crown, yet the States of the Realm having
 thought fit to alter this Settlement, this grave
 Author of the time, condemns *King David*'s at-
 tempts to Set up that pretention to the Crown
 of *England* ; and possibly he might have had
 regard to what *Malmesbury* reports of the Bishop
 of *Salisbury*'s attestation, of what he had from
Henry the 1st's. Natural Son *Robert Earl of*
Gloucester, to justifie Swearing Allegiance to *King*
Stephen.

*Malmesb.
 f. 48. b.*

*Ego Rog. Salesb. Ep.
 sc̄pe audiui dicentem
 Solatum se a Sacra-
 mento, quod Imperatrici
 fecerat. Eo enim pacto se
 iurasse, ne Ren praeter
 Consil. suum & easteror.
 Procerum filiam suam*

*I. Roger Bishop of
 Salisbury often heard
 him say, that he was
 Discharg'd from the
 Oath which he made
 to the Empress, for that
 he Swore upon the
 Condition, that the King*

etiamque

cuiquam Nuptiam daret should not Marry his Daughter to any body out of the Realm, without the advice of him and the rest of the Peers.

John Prior of Hazliffield now Hexam, says,

" David not unmindful of the Oath, which he and the Universality of the Kingdom had Sworn to H. 1st. in relation to the Succession, rais'd an Insurrection or Rebellion against the Kingdom of England, and obtain'd all the Forts of Cumberland and Northumberland, with the People adjoyning, except Babamburch.

*Inter Scriptores. 10.
f. 254.
An. 1136.
Insurrexit.*

Which shews that till King Stephen's time, Cumberland and Northumberland, with the parts thereabouts, were in the Hands of the English, and then Seiz'd by David in right of the Person to whom he contended that the Crown of England belong'd, in Vertue of a Parliamentary Settlement.

Upon this the Kings David and Stephen compounded the Matter, Henry David's Son did Homage to King Stephen, and at York Stephen gave him Doncaster and Carlisle in augmentum Honoris de Huntedune, in increase of the Honor of Huntingdon; so that they there *de novo* added to that Honor, and made to hold of it, which they did not before, but held immediately of the Crown of England. David In Consideration of this, Restor'd to Stephen all the other Forts and Places which he had taken. So that Cumberland and Northumberland with the parts Adjacent, were in quiet Possession of the Crown of England, as they had been before.

King *David* having got well by this last Expedition, thought to grow upon King *Stephen*, and improve the Advantage the Disturbances in *England* seemed to offer. Therefore, An. 1137. the next year he sends Embassadors, demanding *Northumberland* for his Son. 'Tis Observable that he made no Pretence to it as King of *Scotland*; But for his Son, by the Grand-daughter of *Waltheof*, who had been hereditary Earl of all those Parts. This was Colour to the Pretension. That it was but Colour is evident, *Waltheof* having by his Attainder forfeited all the Land and Honours which he had in his own Right. *Stephen* refusing to comply with this unreasonable demand, *David* renewed his Hostilities.

*Adhuc Pri-
or de Ha-
guifred.*
An. 1138.
*Aelius Seutor
et Pittor,
R. E.*
An. 1139.

Then followed the Memorable Battel of the Standard between the *English*, *Picts*, and *Scots*, where the *English* had an entire Victory. *David* at his return punished both *Picts* and *Scots*, who had fain foul upon one another, and exacted from them fresh Oaths of Fidelity to him.

Which shews that to that very time, the *Picts* were accounted, and acted as a distinct Body of People. The next Year, at the instance of the Queen of *England*, a Peace was concluded between the two Kings at *Durham*. *Henry*, King *David*'s Son taking the County, or Province of *Northumbria*, or the parts on the North of *Humber*, which as will soon appear, will agreed to reach beyond the County of *Northumberland*.

This Agreement is said to have been made at *Duresm*, before the Earls and Barons of *England*, Hostages being given by the *Scots* in *frumentum fidei*, for assurance of their Fidelity.

So that the Scotch Nation, or such as then represented them there, as well as their King, owned Allegiance to be due to the Crown of England, and gave Hostages as Pledges for their Truth. It would seem by what followed, that the putting those Parts under the Son of the King of Scots, which tended to the disinheritance of the Crown of England, was not in full Parliament: For Henry and his Wife coming to King Steven's Court, Ranulph Earl of Chester Fe. 61. professed himself his Enemy, because of Carlise and Cumberland, which he claimed by right of Inheritance.

This was under the Grant above mentioned by W. I. to Ranulph de Melsernes.

An. 1150,

Ranulph taking part with Henry, afterwards King of England, who was received with great Ceremony at Carlise by King David, quitted his Indignation against Henry, Son to the King of Scots, and did Homage to David.

This was upon an Agreement that Ranulph should have the Honour of Lancaster, and his Son should Marry one of the Daughters of Henry, David's Son.

Where 'tis observable,

1. That David takes advantage of the Grant to his Son Henry, and receives Homage of the Earl of Chester, as under the Northumbrian Kingdom.

2. That the Honour of Lancaster was then known to be within that Dominion, and therefore David and his Son disposed of it to the Earl of Chester. But where is the Prince of Cumberland all this while?

If the pretence for the Eldest Son of the King of Scots to have that Title had been thought of in those days, it would not have been omitted at that time, when the concurrence of the Competitor for the Crown of England encouraged the King of Scots and his Son, to carry their Pretensions as far as they could bear. And if it had not been thought of then, it might have been before, when David sought for any pretence to quarrel with King Stephen.

But though the Earl of Chester was prevailed with to do Homage to King David; all that he could get from the People of the Northumbrian Province, when he afterwards entred it with an Army, was to oblige the Princes, or Great Men there to give Hostages for their continuing under the Government of his Son.

CHAP. XXV.

The Charter of Homage for the Kingdom of Scotland, to Hen. 2. and his Son; and the like performed afterwards in a Parliament of both Nations at York.

IT must be agreed that David, King of the Scots, had merited very much of H. 2. and greatly contributed to the Settlement of the Crown of England upon him in remainder, after the death of King Stephen: and therefore

fore without good Proof to the contrary,
'tis not to be thought that H. 2. would exact
more from the King and Kingdom of Scotland,
than was the Ancient Right of the Crown of
England. The Convention or final Agreement
between the then King of England and Scot-
land, settling all Matters in dispense, was as
follows,

" This is the Convention and End which
" Will. King of Scotland made with Lord Henry,
" King of England, Son of Maud the Empress,
" W. King of Scotland became Liegeman of the
" Lord the King against all Men for Scotland,
" and for all his other Lands, as other his Men
" use to do.

" And in the like manner he did Homage
" to Henry the King's Son; and Fealty, saving
" the Faith of the Lord the King his Father.
" Besides, all Bishops, Abbots, and Clergy of the
" Land of the King of Scotland, and their Suc-
" cessors, shall do to the Lord the King Fealty, as
" to their Liege Lord, as other his Men use to
" do.

" Also the King of Scotland has Granted,
" and David his Brother, and the Barons, and
" other his Men, to the Lord the King, that
" the Church of Scotland shall for the future
" pay such Subjection to the Church of England,
" as it ought, and use to do in the time of
" the Kings of England his Predecessors,
" viz. Richard, Bishop of St. Andrew's, and
" Richard, Bishop of Dunkeldyn, and Jeffry, Ab-
" bot of Ospermelyn, and Herbert, Prior of Gold-
" ingham, that the Chureb of England have that
" Right in the Chureb of Scotland, which of Right it
" ought

Bib. Cot.
Dominian
A. 19 Lib.
Resensis
P. T. b.
Conventio
inter Reges
Anglia &
Scotia,

" ought to have, and that they will not be a.
 " gainst the Right of the Church of England;
 " as they have done the Fealty which the Law
 " requires, to Lord Henry, the King, and
 Ligantiam " King Henry his Son, and have assured them
 " thereof.

" The very same the other Bishops and
 " Clergy shall do, by the Conventions made
 " between the Lord the King, and the King
 " of Scotland, and David his Brother, and their
 " Barons.

" But the Earls, Barons, and other men of the
 " Land of Scotland, of whom the King will have
 " Homage, shall do him Homage, against every
 " Man, and Fealty as other his men used to do,
 " and to King Henry his Son and his Heirs, sa-
 " ving the Faith of the Lord the King his Fa-
 " ther.

Ligantiam " In like manner the Heirs of the King of
 " Scotland, and of the Barons, and men, shall
 " do Homage and Allegiance to the Heirs of
 " the Lord the King against every man.

" Moreover, the King of Scotland and his
 " men shall receive no Fugitive, from the Land
 " of the Lord the King for Felony, into Scot-
 " land, or other his Land, unless they will
 " come to right in the Lord the King's Court,
 " and stand to the Judgment of the Court.
 " But the King of Scotland and his Men shall
 " take them as soon as they can, and return
 " them to the Lord the King, or his Justices,
 " or Officers in England.

" But if any man be a Fugitive in England
 " from the Land of the King of Scotland for
 " Felony, unless he will come to right in the
 " Court of the King of Scotland, and stand to
 " Judgment

" Judgment of the Court, he shall not be received in the Land of the Lord the King,
" but shall be delivered to the men of the
" King of Scotland, by the Lord the King's Officers where he shall be found.

" Moreover, the men of the Lord the King
" shall have their Lands which they have, and
" ought to have of the Lord the King, and of
" the King of Scotland, and of their men, and the
" men of the King of Scotland shall have their
" Lands which they have, and ought to have,
" of the Lord the King and his men.

" And for this Convention and End firmly
" to be observed to the Lord the King, and
" Henry his Son, and their Heirs, the King of
" Scotland shall deliver to the Lord the King
" and his men, the Castle of Rokesburgh, and
" the Castle of Berwic, and the Castle of E-
" denburgb, which is called the Castle of the
" Girls, and the Castle of Striveleng to be
" at the Lord the King's mercy.

" And for the Custody of those Castles the
" King of Scotland shall assign of his Revenue
" proportionably, at the Lord the King's Will.

" Moreover, for the performing the said
" Convention and end, the King of Scotland de-
" livered David his Brother for an Hostage,
" and Earl Duncan, Earl Walden, Earl Gibb, &c.
" But when the Castles shall be Restored,
" William, King of Scotland, and David his
" Brother shall be delivered, and after that,
" the Earls and Barons above named shall every
" one have delivered an Hostage, viz. his
" own legitimate Son who has one, and others
" their Grand-sons, or next of Kin, their Heirs,
" and the Castles being delivered, shall be deli-
" vered out of Prison.

*In miseri-
cordia Do-
mini Regis.*

" More-

" Moreover, the King of Scotland and his
 " Men give assurance, that they will deliver
 " the Castles to the King, and will perform
 " the Allegiance to the Lord the King and his
 " Son Henry which they had done, and agreed
 " to do, and with their Lord would do it Faith-
 " fully, without Trick, and without cause of
 " Exception. That the Bishops, and Barons,
 " and Free-men of their Land, who were not
 " present when the King of Scotland concluded
 " an Agreement with the Lord the King, shall
 " keep an Hostage with the King as with their
 " Liege-Lord, against all Men who injure him.
 " And the Bishops shall put under Interdict
 " the Lands of the King of Scotland, till he re-
 " turn to the King's Faith.

" And that the said Convention shall be
 " observed in good Faith, and without Guile,
 " to the Lord the King, and to Henry his Son,
 " by William King of Scotland, and David his
 " Brother, and their Barons, and their Heirs,
 " He, the King of Scotland and David his Bro-
 " ther, and all their Barons abovenamed give
 " assurance, as they have become the Liege-men
 " of the Lord the King against every Man, and
 " of Henry his Son, saving the Faith of the
 " Lord the King, his Father.

This Instrument was Signed at Falais in Nor-
 mandy; but before this, the King of Scots and
 his Brother had done Homage to H. 2. and
 his Son, as other Subjects of the Crown of Er-
 gland had done.

Ben. Abbas For as Benedict, an Abbot of the time has
in Bib. Cot. it.

p. 29. fo. " After the Solemnity of the Estates was
 An. 1170. " over, King Henry went to London, and there
 held

held a great Council about the Coronation of Henry his Eldest Son, and the State of the Kingdom. There he turned out most of the Sheriffs of England, and their Officers.

Then he Summoned Roger, Archbishop of York, and Henry, Bishop of Durham, and the other Bishops of the Kingdom, to be at London on St. Barnaby's Day, to Crown Henry, his Eldest Son.

This was done at that Council; almost all the Earls and Barons, and most Nobles of the Kingdom being present.

The next Day after the Coronation, he P. 30. made William, King of Scotland, and David his Brother, and all the Earls and Barons, and Free-holders of his Kingdom, to become the Men of the New King his Son.

Hence 'tis evident that the King of Scots and his Brother joyned in the same Allegiance with the Earls, Barons, and Free-holders of England.

At that time the King did not seem wise enough to have a Salvo for the Allegiance due to himself.

Certain it is, that the Son, not Contenting himself with only the Name of King, set up for full Exercice of the Authority, in Opposition to his Father.

And the better to carry on his Design, he Ben. Ab. went to Durham, where he us'd a New Great p. 47. Seal, and having Summoned, or Invited the King of Scotland to come to his Side, he Granted him for his Homage and Service, all Northumberland, as far as the River Tine, and granted David for his Homage and Service, the County of Huntingdon, and added to it the County of Cambridge. But

*Nobiliorum
bus Regni.*

*Francos co-
nentes.*

But the King Prevailing, the Grants of his Son Passed for nothing.

To remove all Objections against the Allegiance, of which King Henry had been so Solemnly as above-assured at *Falais*, by the King of *Scots* and his Brother, with many of the Great Men of *Scotland*, in the Name of their Nation and Church; our King having held a Great Council, or Parliament at *Nottingham*, Adjourn'd it to *York*.

Bon. Ab.
An. 1075. Thither he came on the Feast of St. *Laurence*, where he was met by *William*, King of *Scotland*.

Qui secum adduxerat omnes Episcopos, & Comites, & Barones, & Milites, & Francos tenentes terræ suæ, à maximo ad minimum, ad faciendum ibi hominum, & ligantias, & Fidelitates, Regi Angliae & heredibus suis in perpetuum, contra omnes homines.

Sicut convenit inter eos apud Falisiam in Normannia, antequam Rex Scotiae de ergastulo ejus exiret.

Itaque Congregatis omnibus in Eccles. Sancti Petri Ebor. Illustrissimus Rex Scotiae Praecipit Ep. & Comit. & Bar. terra

Who had brought along with him all the Bishops, and Earls, and Barons, and Knights, and Free-holders of his Land, from the greatest to the least, there to do Homages, and Allegiances, and Fealties, to the King of England and his Heirs for ever, against all Men.

As it had been Agreed between them at *Falais* in *Normandy*, before the King of *Scotland* went out of Prison.

Therefore all being Assembled in St. Peter's Church at *York*, the most Illustrious King of *Scotl.* commanded his Bishops, and Earls, and Barons,

sua facere ligantiam, & Fidelitatem, & hominum Regi Hen. fil. Matildaem Imp. & Hen. Regi fil. suo, sicq; factum est. Et imprimis Rex Scotiæ & David frater ejusdem devenerunt ibidem homines præd. Regis de omnibus tenementis, & nominatione de Scotiæ, Salva fide Dom. Regis patris sui.

to do Allegiance, and Fealty, and Homage, to King Henry Son of Maud the Empress, and to his Son; and so it was done. And in the first place the King of Scotland, and David Brother there became the Men of the said K. for all they held, and for Scotland by name; saving the Faith of the Lord the King his Father.

But in the Allegiance Sworn by the Scotch Nobility and Freeholders, there was no saving of the Faith of their King.

It cannot be pretended that this is asserted only by English Historians; for the Scotch Register of Maikros says,

Comites, & Barones, & omnes Majores & potentes per regnum Scotiæ, coram Rege suo Will. ligantiam fecerunt, & obrides dederunt, & Episcopi ejusdem in verbo veritatis fidelitatem jurauerunt H. Regi Angl. Civitate Eboraci.

The Earls and Ba-
rons, and all the Great Chron.
Men, and Men of Maikros.
Power throughout the
Kingdom of Scotland,
before their King
William performed Al-
legiance, and gave
Hostages, and the Bi-
shops of the said King-
dom Swore Fealty in
An. 1175.

the word of Faith, to Henry, King of England,
in the City of York.

Six

Sir T. C. who was not acquainted with this part of History, that the King of *Scots*, and the States of his Kingdom, at full Liberty, Recognized the superiority of the King of *England* over that Kingdom, in a Parliament at *York*; Argues only upon what was done while the King of *Scots*, was a Prisoner. He agrees the Fact, that *William* then promised, that he and his Successors should hold the Kingdom of *Scotland* in Fee of the King of *England* for ever; but then arguing upon part of the Fact, he says,

" Certainly he who is in the power of an Enemy, or detain'd Captive may easily be compelled to do any thing. But the Laws allow him this Relief, that being at Liberty, he is not obliged to perform what he promised against his Will; and therefore, whatever was done, said, or promised by King *William*, then in the Power of his Enemies, and having no hopes of Redeeming himself otherwise, is accounted null and void in Law; and seeing Princes do but seldom go to Law with one another, there is no need of a Declaration, to use the Law Phrase, to make this void in Law.

Not to observe, that if this were according to the Law of Nations, Captive Princes being incapable of Treating, could never obtain their Liberties upon any Terms; the circumstances of the story shew, that this Doctrine does not reach the Case. For,

i. The Terms in relation to the Subjection, were so far from Hard, that they were but Declaratory of the inherent Right of the Crown of *England*.

2. But

2. But to silence all *Cavils*, the Submission made by Prince and People at full Liberty, would not be the less effectual, because it was in pursuance of a former Promise; because, if it had been to be Objected against, it is not to be thought that it would have been performed.

If it be said that the *Scotch* Nation could not have had Peace, or the Hostages they had given, restored without this, and therefore they were not at full Liberty: It may as well be said, they were never capable of contracting, being always Subjects to the Crown of *England*.

C H A P. XXV.

Of Homage in the time of H. 3. without regard to any particular Lands but Lodeny, with a saving of the Right of the Crown of England. Of Homage expressly for the Crown from Scotland.

I should not have looked lower for proofs of the Right of the Crown of *England* to Homage for the Kingdom of *Scotland*, had not my Zeal for Truth been a little warm'd, at observing the unfairness of Sir *Thomas Craig*, and the great oversight of the Moderns, who have not attended to demonstrative evidences in an Author with whom every Body that pretends to know any thing of our *English History*, must needs be conversant.

This is the Historiographer to *H. 3. Matth. An. 1236.*
Paris. He shews that in the 20th. of that King *Alexander the 2d. King of Scotland demanded* *20th. H. 3.*

Nor-

In Marita. *Northumberland*, which he claim'd as given him
gum.

Frank-marriage by King *John*, when *Alexander*
Married his Daughter. This was in a Parliament
at *York*; and it seems the Parliament
disapproved the giving of that (tho' it could
be no more than the Government of the
County) for the King offer'd but 80 Marks in
Lieu of it; which not being accepted there
was then no agreement.

But this makes it evident that *Northumber-*
land was not claim'd upon any ancienter Right
than the gift of *King John*.

An. 1237. *at H. 3.* The next Year they came to an agreement
in a Parliament at *York*, that the King of *Scot-*
land should have *trecentas libras terrae, sine*
Castri Construccione, " three Hundred Librates
" Land without the Building of a Castle, or
" power to Build any.

A Librate has generally been taken for so
much as was worth 1 Pound by the Year, of
which 20 in those times were accounted a
Knights Fee, so that this was 15 Knights Fees.

On the other side the King of *Scots* was " to
" do *Homage* to the King of *England*, and a
" League of Friendship was to be Establish'd,
" and the King of the *Scots* to swear that
" he would *Fairfully* perform this to the King
" of *England*. Where-

1. The doing Homage was without respect
to any particular Lands held in *England*.

2. There was not only to be *Homage*, but
an *Oath of Fidelity* or *Allegiance*.

This agreement, as will appear, was not ex-
ecuted till the 26th Year of King *Henry's* Reign,
and yet in the 24th the King of the *Scots* exe-
cuted this Charter.

Alex.

„ Alexander by the Grace of God King of Scot- An. 1240.
 land, to all Christian People who shall see or 24. H. 3.
 „ hear this Writing, Greeting. We will that it
 „ come to your Knowledge, that we for us
 „ and our Heirs, have Granted and Faithfully
 „ promis'd to our most Dear and Leige Lord
 „ Henry the 3d. by the Grace of God Illustrious
 „ King of England, Lord of Ireland, Duke of
 „ Normandy and Aquitain, and Earl of Anjou,
 „ and to his Heirs, that we will for ever pre-
 „ serve true Fidelity to him, and Love ; and
 „ that we will never enter into any League by
 „ our selves, or by any others on our part
 „ with the Enemies of the Lord the King, or
 „ of his Heirs, to procure or make War, whence
 „ Damage may, or in any manner can arise to
 „ him, or his Kingdoms of England and Ireland, or
 „ other his Lands, unless they unjustly grieve
 „ us. Saving the agreements between us and
 „ the said Lord the King of England lately en-
 „ trered into at York, in the presence of Lord
 „ Osbo, with the Title of St. Nicholas in the
 „ Tullian Prison. And saving the agreements
 „ made upon the Marriage to be Contracted
 „ between our Son and the Daughter of the
 „ Lord the King of England.

Bonam f.
dem.

Then follow the Names of many of his great
 Men, whom he had caus'd to Swear that he
 should perform on his part, and a Clause that
 his Barons should Rise against him, if he acted
 contrary to that Charter.

Upon this, 'tis evident that at a time when
 H. 3. was in no Condition to extort rigorous
 terms from the King and Kingdom of Scotland,
 the King and Great Men recogniz'd Leige Ho-
 mage, or Allegiance, to be due to the King of

England, and particularly bound themselves to what did but result from that Allegiance, and yet was fit to be express'd to avoid all occasion of Controversie.

1. That the *Leigeman* should not joyn with his Prince's Enemies.

2. That if he did not in every respect keep to his Duty, his immediate Subjects should be discharged of their Allegiance to him, and Pay it to the Superior Lord.

All this being without regard to any Lands holden in *England*, makes it evident that was *Leige Homage* for the Kingdom of *Scotland*.

Rot. Claus. Tho' according to *Mariotus Paris*, and the Record of the 26th of H. 3. it was agreed in a Parliament in York in the 21st. that the King of *Scots* should have a quantity of Land in *England*, in Lieu of all his Demands, which as the Record shews, was but 200 *Librates*, or 10 Knights Fees; The King of *Scots* not having given full satisfaction, had not the Land Assign'd him till the 26th Year.

Rot. Pat. This is Evident by the Close and Patent Rolls of that Year; for as the Close Roll recites the agreement, the Patent Roll shew's that the 200 *Librates* were then extended to the Use of *Alexander King of Scotland*.

Vid. Mat. "Tis observable upon the Patent Roll, That *the King of Scotland* had Demanded 1500 Marks, which *William his Father* had Advanced to *King John*, and claim'd *Northumberland*, *Cumberland*, and *Westmoreland*, which it seems he thought he had duly Purchas'd for the 1500 Marks, if he had it not in *Frank-marriag*. *He further insisted on an Agreement* that *H. 3.* should Marry his Sister *Margaret*, and *Richard*

Par. Sup. *our*

our Kings Brother, his Sister *Isabel*.

But these and all other Demands he releas'd, in Consideration of the 10 Knights Fees, which he had in the 26th. of K. Henry's Reign. Which faithful account from the Records, makes it evident, that the Charter of *Homage* was without any regard to *Northumberland*, *Cumberland*, and *Westmerland*, or any Land within those Countries other than the 10 Knights Fees ; of which there was then but an expectation, but no *In-vestiture* till afterwards.

This further shews, that the *Homage* which shall appear to have been perform'd after the 26 of H. 3. could have no relation to either of those Counties, all pretence to which was then fully Releas'd.

The Marriage of the King of Scots Son to *Mat. Par.*
H. 3^d. Daughter, part of the Agreement in the An. 1552.
Parliament at York, 21st H. 3. took not effect,
till the 36th. after the Death of *Alexander*
the 2d.

Here Sir T. C. according to his common way
of Triumphing with Authorities point blank
against him, has a Passage which it may be of
good use to Transcribe : Having no Mercy up-
on poor *Hollingshead*, he tells him,

" You are not only Purblind, but Stone-
" blind in your History, to assert that H. 3.
" never Demanded *Homage* from *Alexander* his
" Son-in-law, because he was not of Age to
" perform it ; or at least, you craftily Dissemble,
" as if you had not Read that which Cuts the
" Throat of all this Controversie.

" And therefore I will oppose to you the
" very Words of *Matthew Paris*, lest I should
" seem to have contriv'd any thing of my own
" Head.

*De Regno
scil. Angl.
Landiano
& terris
Reliquis.*

" The King of the *Scots* in the time of the
 " Marriage, did *Homage* to the King of Eng-
 " land, upon the account of the *Tenement* (*Ti-
 " nementum*) which he held of his Lord the King
 " of England in the Kingdom of England, and
 " the rest of the Lands of *Lunden* or *Laudon*,
 " which is a *Tenement* of *Northumberland*; and
 " when this was agreed upon, it was also de-
 " manded that the King of *Scots* should per-
 " form *Homage* and *Alligiance* to his Lord the
 " King of England, on account of the King-
 " dom of *Scotland*, as his Predecessors had done
 " to the Kings of England, as is evidently set
 " forth in many places of the *Chronicles*.

" The King of *Scots* answer'd, that he
 " came thither in a peaceable Manner for the
 " Honour of the King of England, and by his
 " Command, to enter into a *Confederacy* with
 " him by *Mystical Ties*, and not to give him any
 " answer to that Question, for he had not de-
 " liberated with his Nobles upon that Head;
 " nor had he a Council with him Competent
 " for so great an Affair.

Sir T. C. adds,

" In this answer it is to be observ'd, that the
 " Words [as his Predecessors had done to the
 " Kings of England, as is evidently set forth
 " in many places of the *Chonicles*] are *Paris's*
 " own Words, and therefore frivolous and
 " vain. For neither does *Paris*, nor any other
 " English Chronologer, ever make mention of
 " Homage perform'd for the Kingdom of Scot-
 " land, except that which was exacted from
 " King *William*, during his *Captivity*, of
 " which I have treated before; or if they have
 " any Author, why are they afraid to name
 " him?

" him? For as to all the former Citations, I have
 " clearly refuted them already; but in this
 " performance of Homage, Alexander did Right,
 " in performing it for the Lands which he held
 " in England, but refused it for Scotland, as he
 " ought indeed to have done.

In this Quotation, over which Sir T. C. thus flourishes his Sword, he was the less excusable as he writ in Latin, and therefore ought not to pretend to explain words while he is quoting them, as a Translator may sometimes: But whether the Fault was in him or his Translator, I cannot judge, not having seen his Latin Copy.

I am obliged to take it all as his Words; and though I shall avoid using any expression, which such sort of Quotations might provoke a Man to, I cannot but observe, that he need not have been so hard upon Hollingshead, for holding that the Homage which he asserted to be due, was not Demanded because he was not of Age to perform it; Since a Reason very like it was given, That the King would not Molest a King so Young, and a younger Bridegroom.

The Words and Sense of Matthew Paris are as scurvily treated, as poor Hollingshead: Mat. Paris says,

*Fecit Rex Scottie Re-
gi Angl. Homagium ra-
tione Tenementi quod te-
net de Domino Rege; de
Regno scilicet Angliae,
Laudiano viz: et terris
reliquis.*

The King of Scot-
land did Homage by

reason of the Tene-
ment which he holds
of the Lord the King,
that is to say, of the
Kingdom of England,
to wit, Lancian, or Lo-

thian, and the rest of his Lands.

To Disguise what would be too visible if the true Words or Sense had been given, what

*Mat. Paris
F. 555
Tam juve-
nem Regem
& junio-
rem spon-
sum mole-
stare.*

Paris makes a Tenement, something in Tenure, of the Kingdom of England, Sir Thomas Craig or his Translator renders, within the Kingdom.

Not but that those Parts were truly within the Kingdom of *England*; but *Mariotus Paris*, who was no great Friend to the Prerogative of the King, takes care that the Tenure should be understood to be of the Crown of the Kingdom.

And though those Parts were within the old *Northumbrian Kingdom*, the Historian takes no notice of that, but [which is a Tenement of *Northumberland*] is entirely added to *Paris's Text*.

For a fruther Disguise, the Cramp Name of *Leuden*, or *Laudon*, is given to *Laudian*, or *Lotbian*, the old *Pictland*, which, as has appeared above, *Edward the Confessor* gave to King *Malcolm*, and *W. I.* confirmed to him, upon his doing Homage for the Kingdom of *Scotland*. Thus I have taken off the Disguise from this plain Confession of the King of *Scots* in the 36th. of *H. III.* that all *Lodeny* was enjoyed of the Grant of the Crown of *England*: which is a full Confirmation of what I have shewn above, of Homages for the Kingdom of *Scotland* upon the Grant of *Lodeny*, and Investiture afterwards, not only with that *Fee*, but with the Kindom of *Scotland*. Having shewn that, with much more to the same purpose of ancient times, from Authorities which Sir T. C. has offered nothing against, and perhaps with which he was very little acquainted; I need not repeat any thing in Answer to his Challenge

Challenge upon this Head ; but must observe, that all the words which he says are *Matthew Paris* his own, cannot but have great weight, if they were so, they carrying his Attestation that many places of the *Chronicles* evidently set forth, that the Kings of *Scotland* had done *Homage* to the Kings of *England*, on Account of the Kingdom of *Scotland*. But the contexture of *Paris's* words shews that this was urged at the King of *Scots* doing that Homage ; and as is most probable, by the *Chief Justice*, it being in the Kings Court. But the King not being willing to have it press'd upon his Son-in-Law on the Wedding-Day, took the Recognition for *Lodeney* and other Lands, without which the Kingdom of *Scotland* would be considerably Dismembered.

C H A P. XXV.

That the Scots from of Old, to the time of H. II. and downwards, were more immediately under the Crown of England than is necessarily implied, by Feudal, or even Liege-Homage for the Kingdom. Their Subjection. 1. In Spirituals. 2. In Temporals, undertaken to be proved. And 1st. of it in Spirituals.

Having as above deduced the Title of the *Crown of Scotland* to *Homage* for all which now obtains the Name of *Scotland*, from within the British times, to the end of E. I's. Reign,

I shall shew that the direct Dominion which that Glorious King Claim'd, and Asserted to the full, was exercised by enforcing the same Laws.

- I. In Spirituals, or in Ecclesiastical Matters.
- II. In Civil.

I. Sir Thomas Craig Objects against the Inference from the Supposition, that their Clergy are Subject to an Archbishop here, with better Colour than he uses in most places; and it must be own'd that such Superiority would not of it self infer the superiority of the Civil Power, otherwise than as it was a means to secure the Subjection which was before due; and unless it was attended with Circumstances, which shewed an Union under a Civil as well as an Ecclesiastical Head; which Circumstances appearing, the Challenge to prove the Subjection of their Church to ours is by no means to be declined, especially since a Learned Prelate of our Church, Censures a considerable Evidence of the Superiority and Power of an English Arch-Bishop, as justly liable to Exception, and as thought, by Men of Skill, to favour strong of the English Cloister.

*Scotish Hist
Lab. p. 357.*

p. 309:

Sir T. C. who understood this matter better, wisely takes Advantage of the Mistakes of Hollingshead and Polydore, and denies that the Arch-Bishop of York originally had, and continues to have, the right of Jurisdiction and Superiority over all the Bishops of Scotland.

He calls the Inference from this a Trick; but I say the Trick lies in the state of the question.

For the true question is of the Right of the Metropolitical See of Canterbury; and this Sir T. C. could not but have seen in his Oracle Bede.

The

The Romish Apostle Austin, whose Acts are Bede's chief Subject, coming to bring Men under Subjection to the See of Rome, and to a Canonical Observance of Lent, the great Points of Christianity which he was intent upon, was received as one sent by Christ's Vicar, to teach the Word of God.

Having wrought himself into the favour of Chron. *Sax.*
Ethelbrygge King of the *Cantuarians*, but at *An. 596.*
that time the most Powerful, or Chief King of
the Island, he, with great Success made use of
both Swords to carry on, what, according to
the Blindness of that Age, was thought God's
Cause.

Having received a Consecrated Cope from
Rome, he was dabb'd Pope of this other World,
and Communicated his, and the Pope's Spirit;
to some other Booted Apostles; who after they
had used the most effectual means to silence the
British Preachers of the Gospel, set up a flou-
rishing Hierarchy: And Austin getting to be the
Head by the Pope's Recommendation, was
very grateful in his Returns to the See of Rome.

As while there were many Kings within this
Island, there was generally one above all the
rest, so it was with the Spiritual Princes; and as
Mr. Dodwel makes *Jerusalem* the Mother-Church,
because the Gospel was first Preached there;
for the same Reason *Canterbury*, made Sacred
by St. Austin's coming first thither, was the
Metropolis of all Britain, and as far as that new
Light spread, St. Austin was look'd on as the
immediate Head of the Church next to the
Pope.

If Austin's Summons to Councils or Synods
were not held as Authoritative as the Chief
King's,

King's, at least he was joyn'd with him ; and if barely the Meeting upon the Metropolitical Summons would not prove the Superiority of the Prince, yet when ever the King alone Summon'd, or joyn'd with the Arch-bishop, it manifestly shew'd that the Summons was from a King own'd for Monarch of the whole Island, by all who obeyed the Summons. Presidents of both kinds are frequent in Sir Henry Spelman's Collection of Councils. A Synod at Worcester, held by Austin, was as Sir Henry Spelman observes, truly Panbritannica, of all Britain, for there were a multitude of Britons, also Scots, and some Picts, Litigating about Easter.

Spelm.
Council.
1 Vol.
f. 101.
An. 601.

f. 168.
An. 680.

f. 189.
An. 694.

f. 193.
Citing
Bede.
Plurima
pars Scotor.
in Hiber-
nia.

Bede.lib.3.
c. 29.

There was another Council of all Britain at Hedtfeld, Theodore Arch-bishop of the Island of Britain, and of the City of Canterbury presiding, the rest of the Bishops of the Island sitting with him.

There was a great Council at Becanceld, Witterred King of Kent presiding, and also Berewald Arch-bishop of Britain.

At this the Scots were; but yet Bede calls them Scots from Ireland, as if their abode here was not then accounted fix'd.

Bede, who would not allow any King to be Superior to his Northumbrian Kings, speaking of the Death of Deus-dedit Arch-bishop of Canterbury, says,

In these times the most noble Kings of the English, Oswi of the Northumbrians, and Egbert of the Cantuarians, holding a Council together what ought to be done about the State of the Church of the English, (for Oswi, tho' E-

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Eng
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Bish
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Succ
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‘ ducated by the Scots, truly understood that
 ‘ the Roman was the Catholick Church) with
 ‘ the Election and Consent of the Holy Church of the
 ‘ English Nation sent a good Man, Wighard a
 ‘ Presbyter of Deus-dedit’s Clergy, and fit for a
 ‘ Bishoprick, that having received the Archie-
 ‘ piscopal Degree, he might Ordain Catholick
 ‘ Bishops thro’ all Britain.

He was prevented by Death, and Theodore
 Succeeded to this Metropolitical Power.

In his time Wilfred Archbishop of York, was Bede
 call’d Bishop of the Northumbrians : That f. 272.
 whole Kingdom was immediately his Province,
 but Canterbury was Superintendent over all.

That all the Episcopal Church of the *Picts*
 and *Scots*, were under his Care, appears by this
 passage in Bede.

‘ *Edbed, Bosa, and Eata, were Ordain’d at York* f. 291,
 ‘ by Archbishop Theodore, who also 3 Years af-
 ‘ ter Wilfred’s Abscession, or Abdication, added
 ‘ two Bishops to their number, *Tumberb*
 ‘ to the Church of *Hagulstad*, *Eata* remaining
 ‘ at *Lindisfarn*, and *Trumwin* to the Province of
 ‘ the *Picts*, which then was under the Domi-
 ‘ nation of the *English*.

But as to the Superiority of the See of Canterbury
 over the whole Church throughout Britain,
 the Point was so fully Settl’d in a great Coun-
 cil at Westminster, upon the Dispute between
 Lanfranc Arch-bishop of Canterbury, and the
 then Arch-bishop of York, that no Man who
 has attended to our ancient Historians can
 question it.

Brompton agreeing with others, says, that in
 “ that Council, the History of Bede having been
 “ Read

Brompton
 & al. de
 Ann. 1071.

Read, 'twas shewn that from *Augustin's* first coming, to the end of *Bede*, which was about 140 Years, the Arch-bishop of Canterbury held the Primacy over the whole Island of Britain and Ireland.

And 'tis observable that *Gerwase* of Canterbury, who liv'd in H. 2d's. Reign, says of *Austin*, That "he not only took care of the new Church, gathered out of the English, but of the Scots, who Inhabit Ireland : the only Country of the Scots, then being by him, as well as *Bede* taken to be Ireland.

It does appear from what I have shewn, compared with the Letter from the King of Scots to the Archbishop of Canterbury, in the time of H. 1st. that none but the Arch-bishop of that See us'd to Consecrate the Arch-bishop of St. Andrews, the chief Bishop of Scotland.

Pid.
Mon. 1.
Vol. 44

But after *Lanfranc* had gain'd his Point of Supremacy, in the Council of *Winchester*, where *Lanfranc* joyn'd with the Arch-bishop of York, in settling the Diocese of the Bishop of *Durham*; It seems by that Letter and other Circumstances, that he Resign'd the immediate Government of the Church of Scotland, at least the Consecration of its Bishops, to the Arch-bishop of York, the Primate of the Northumbrian Kingdom.

Ms. Bib.
Cot. Cleo-
pat 1.4. &
Scatch
Hist. Ap.
pend.
p. 152.
153.

Accordingly *Turstin* Arch-bishop of York, in the time of H. 1st. obtain'd Bulls from the Pope; which in Confirmation of *Lanfranc's* Cession, required the Bishops of Scotland to obey the Arch-bishop of York, as their Metropolitan.

This, as appears by the Letter of the King of Scots, which a Learn'd Prelate of our Church would

would set aside, they refus'd to do, because of the *Perogative* of the See of *Canterbury*; insisting that *Lanfranc's Cession*, and Transferring them over to the other See, was in the absence of the *King* and *People of Scotland*: And therefore declaring that if the then *Archbishop of Canterbury* would support them with his Authority, they would to the utmost oppose the *Primacy of the See of York*.

But tho' they Disputed which of our *Archbishops* ought to be *Christ's Vicar* to them, that Letter from the *King of the Scots*, in the Name of himself and his People, shews that the Confession in the agreement with *H. 2.* that the *Church of Scotland* of Right, was, and us'd to be, Subject to the *Church of England*, is not to be look'd on as extorted by Duress.

In the *Synods* which were held under the *Monarchs of Britain*, *Canons* were made from time to time, as the exigencies of the *Church* were thought to require, of which I need not stay to give Instances :

But must observe that when *Lanfranc*, in the time of *W. 1.* enquir'd what was the ancient ^{Vid} *Spelm.* *Manner of holding Synods* among the *English*, ^{Concil. in Princip.} he was inform'd that after the *Clergy* were Seated, there were to come in Men of good *Conversation*, the *Probi Homines*, or such as by Reason of an *Unanimous Election*, deserv'd, or ought to be present.

This, as was the Practice of those times, took in all the Members of the *Parliamentary Council*, and only the subject Matter and occasion of their Meeting distinguish'd *Synods* from Civil great *Councils*: to both there was a National Authority, which as it was exercis'd under

der one Head, and all parts of this *Island* were thus Embodied together, manifested their Acting as the Subjects of one and the same *Imperial Crown*. As this has appeared in relation to Ecclesiastical Matters, I shall make it no less plain in Civil.

C H A P. XXVII.

Shewing the Continuance of the British Common-Law, and that the Scots, and all Parts of this Island though they were indulged in particular Customs, were under Allegiance to, and Governed by the same Law, till within the Reign of H. II. and after.

THough Christianity was in these Islands, in the simplicity of the Gospel, long before the coming of Austin the Monk, yet the generality of the Writers since, having had a mean Opinion of that Religion, which was un-adorn'd with Pomp; and Worldly Greatness. I must leave it to them, who are Masters of the Rich Treasures in the British Tongue, to give a tolerable Account of the State of the Church here, before it was Dressed out for Shew.

I must agree, that there is more than Men are generally aware of, in the *Maxim*, no *Bishop*, no *King*; for I do believe, that as the Authority of the *Prince* has supported the *Sees*, the Metropolitical Power generally strengthen'd with

with the Legantine from Rome, was for a long time a means the more effectually to unite a Body of disagreeing Members, under one Temporal Head.

But before this Authority brought along with it Disputes about the tything, Mint, Annis-seed, and Cummin ; the artless Profession of True Religion as it united men in a Common Interest in *Spirituals*, made all upon the Island the more heartily unite against *Pagan Invaders*; and to maintain the better Correspondence, they chose Rulers in several distinct Communities, to be under one Head, or General : and whatever Clouds may seem to involve the times before King Arthur, from within his Reign at least, as the Confessor's Law shews, the whole Nation was under one Law, especially the Fundamental, which took in and concluded the Right of all Persons Interested within the Island, to meet in Person, or Representation, in the *Palace* of all the Subjects of the British Monarchy.

In this sense, and not in relation to particular Customs, or Positive Laws in relation to Private Rights, is the Chief Justice Fortescue to be taken, who after he had received the well attested Story of Brutus's Erecting a Kingdom here, and mentioned Scotland's being advanced to a Regal State from a Dukedom obeying England, says, *This Kingdom has been governed with the same Customs.* Fortescue, p. 32. & 33.

Take this as spoken of the Rules of Government, and they may appear Invariable ; and this may be extended further to what has obtained the name of the *Common Law of the Kingdom.*

I must

Holo.

I must take off my Pen from entering into a large Justification, of what Chief Justice Ffynche has delivered with exquisite Judgment; Had not the Publick been Robbed of the most valuable M.S. of that, and an other Chief Justice, it might have been presumption to have enter'd upon any Subject which they had illustrated.

I might shew at large the Uniformity of the Government, from within the British times, in the Prerogative of the Prince, the Jurisdiction of the Lords, and Inviolable Rights and Priviledges of the Commons ; and how admirably the Constitution has tempered and ballanced one with the other : But as I have already shewn, that the *Fudal Law* was so far from being brought in by W. I. that it was here in the British times ; I shall give a short Sketch of the proofs, that the Scots, as well as the English, were Governed by the British Laws, and under Allegiance to them, from the earliest times, till their so ample recognitions in the Reigns of H. II. and E. I.

That by King Arthur's Law, all Princes, Peers, Military Tenants, and Free-holders, were to meet in the *Folemote*, or National Assembly, on the 1st. of May, we have the Authority of the Confessor's Law, and that shews, that as the Assembly was Composed of all with whom the Ballance of the Power of the Nation was, its Business extended to all the Interests of the Publick ; and the chief was the preserving the Person of the Monarch, the Rights of the Crown of the Kingdom, and the Protection of all men, from the Insults and Ravages of Foreign Invaders.

Thos

Though ordinarily in times of general Peace the Assemblies were to be on a fixed Day, they could not but be often prevented, and therefore, attending upon the Precept or Summons of the Monarch became a Duty, by virtue of the Prerogative, resulting from the nature of the Supremacy, if it had never been expressly delegated.

By virtue of this Law of King Arthur, which was as truly followed, if the National Council met at the time appointed by the Monarch's Summons, as if it had been upon the day fixed by the Constitution; the Island, as the Confessor's Law assures us, was delivered from an Invasion of the Danes, which threatened Universal Ruin. That the Authority of the Confessor's Law might be sufficient for this matter, I shall confirm it with one undeniable Instance.

Sir Henry Spelman in his Councils, mentions one of all England, met at London, the 26th of May, which was as near as possibly could be to the day fixed by the British Constitution; as a Charter passed in that Council, which does not stand upon Inglis's single Authority, though that is very good, shews, this was held under Egbert, then Monarch of the whole Island: there were with Withlaf King of the Mercians, who was the chief in Power under him, both the Arch-Bishops, the rest of the Bishops of England, and the Great Men.

This, as the Charter shews, was, when they took Council together against the Danish Pirates.

Let it not be said that the King of Scotland is not mentioned as present, since as it has appeared above, Egbert was Monarch of the whole Island,

Laws of
Eng. & Corth.
Tet. Grove
c. 35.

Spelm's
Council.
Vol 1.
p. 316.

Ann. 833.

Island, and besides, there was no such Country as Scotland then, but Ireland.

Harding, speaking of the Assistance Egbert had against the Danes, and his Retreating from them at the first, says it was

" Till that they came to Doncastre full right,

" Where to him came the Kings and Baronage

" Of all England and Wales, with all their Might.

The Author of the *Polycronicon* shews the Foundation of the Common Law to have been laid principally by *Dunwallus Molmutius*, whose Laws, he says, continued *satis celebres*, in sufficient Reputation, *usq; ad tempus VV. Conq.* Even to the Conqueror's time.

Ralph *de Diclis* Dean of *Paul's*, in King John's time, who, for matters of the greatest Antiquity cites *Bromer*, an Author, as I take it, not now to be found, makes *Dunwallus* immediate Successor *de Cæsiblane*, King of the Britons, when *Julius Cæsar* Visited this Island, which he was far from Subduing.

Dunwallus, (a) according to the Learned Dean of *Paul's*, was the Son of the King of Cornwall; Conquered Five Kings then, in Britain, and Established the Laws which are called the *Molmutian*.

In the Third Succession of British Kings, after *Dunwallus* was *Girfelin*, who, as *Prideaux* says, " was the more Famous for his Learned, and Prudent Wife *Mercia*, from whom the Saxons had their Laws, *Marebene Log*, translated unto them by King *Alfred*.

The Author of the *Polycronicon*, speaking of the *Molmutian* and *Marcian* Laws, says, " These two Laws Gildas the Historian Translated from the British into Latin, and King *Alfred*, after-

Of the
Common
Law. Po-
lycronic
on
l. 202.

(a) Hist.
Brit. Ch. 1.
Angl. ed.
per Diclis.
Gale. 14.
F. 553.
Hist.
Compendio-
osa de Regi-
bus Britan.

Prid's In-
troduction.
p. 274.

" afterwards from the Latin into the Saxon.

" These were called the *Mercibengla*.

" Alured himself also added a Law written in English, which was called *West/Saxenlaga*. At last, the Danes Ruling in this Land, a third Law sprung from them, which was called *Danelaga*; out of these King Edward the 3d. Published one Law, which to this day is called the Laws of Edward.

Being no party in the Controversy between the Bishop of Carlisle and Dr. Atterbury, who are able Men in their way, I need not determine which is in the right in the Interpretation of *Lag*; I indeed should have thought that it had been impossible for a question to be raised upon it.

*Vid. Bishop
of Carlisle
pref. to
Scotch Hist.
Libr.*

I must observe, that the *Edward* mentioned in the *Polychronicon*, was the Third before the reputed Conquest; the first was the Son of *Alfred*, the second of *Edgar*.

The difference of the several Laws will appear to consist only in particular Customs, and those chiefly, if not wholly, in relation to Pains and Penalties. In the *Annals of Winchester*, 'tis said,

Leges Briton. Rex King Alured or Al- Annales
Aluredus translust in fred Translated the Winton.
Angliam, quæ tunc di- Laws of the Britons int. script.
cebantur leges Regis Alu- into English, which were Angl. Sacr.
redi. called King Alured's F. 32. De
Laws. An. 872.

The *Mirror of Justices* must needs be thought extracted from ancient Pandects, or Books of Judgments much more ancient than the time of *W. I.* unless we will believe the Names and Crimes of several Judges, Hanged in King *Alfred's* Reign a meer Fiction. U 2 The

*Mirror p. 1.
Les vies
rolls des
tressore, &c.*

The *Mirror* at the beginning refers to the Rolls of the King's Treasury, in searching which, he had been assisted by *Tberai*, for finding out the Foundation and Original of the usages of England, given, or created by *Laws*.

p. 5. There, after mention of the *Holy Scripture*, as the Fundamental Rule of our *Laws*, the Compiler of that Collection giving a reason for the Title, says,

Lequel summe jee appelle Mirror aux Justices, selongz ceo que jee trouvales vertues les substances embellies, & puis le temps le Roy Arthur uses per Saints usages, accordant a les rules avandis.

Which Summary I call a *Mirror* to Justices, according to what I find the Virtues the Substances embellished, and since the time of King Arthur, used by holy usages, according to the Rules above-said.

Where he lays the Foundation of our Ancient Law in King *Arthur*'s time, which 'tis reasonable to believe, that he, and *Tberai* found in that then greatest Repository of Records, the *Treasury of the Exchequer*.

As I observ'd before, Authors tell us, *Cnute the Dane*, in a National Assembly, agreed, that both *Danes* and others should be Governed according to *Edgar's Laws*. This was, as *Edgar* was the last before him, who gave Reputation to the use of the Ancient British Laws; but that these were as truly at the time when *Cnute* confirmed them, accounted the Laws of former Kings appears by *Windover*, an Author of undoubted Crédit, who says,

The

" The English and Danes in a Colloquy Celebra- *Windover*
 " ted at Oxford, were brought to an Agreement, *M. S. Bib.*
 " for the observing the Laws of Edward the 1st. *Cot. de an.*
 " Upon which, those Laws by Cnutes's desire *1611. In*
 " being Translated from the English into Latin, *Colloquio*
 " they for their Equity are by the King Com- *apud Oxon.*
 " manded to be observed, as well in Denmark *celebrato de*
 " as in England. *legibus E. I.*
tenendis *effetti sunt*
concor-

Thus did the English Feudal, and other
 Laws spread in Foreign Parts, before the Con-
 fessor had taught them the Normans. Of these
 Ancient Laws; the Account given W. I. in
 that Digest, which has obtained the name
 of the Confessor's Laws, says,

" Edward, by the Counsel of his Baron, ex- *Leger Ed.*
 " cited the Law, which had slept sixty eight *Lomb. Arch*
 " Years, repaired it excited, adorn'd it *E. 150. Et*
 " confirmed it, and being confirmed, it *Spelm.*
 " is called King Edward's Law; not that he
 " first Invented it, but when it had been laid *Glos. tit.*
 " by, and wholly given up to oblivion,
 " from the Days of his Grand-Father, King *Lex.*
 " Edgar; Edward himself, because it was just
 " and honest, drew it out of a deep Abyss, and
 " caused it to be observed.

This is the Law which William the 1st. ex-
 presly confirmed, the Maintaining which has
 generally in succeeding Reigns been part of
 the Coronation Oath. Now let us see whe-
 ther the Practice of these Laws was enforced
 among the Picts and Scots of Albany.

As I shew'd above from parts of his Laws,
 in affirmance of the Old Saxon, or rather, as
 has appeared, the British Laws, the Scots and
 Picts of Albany were within his Government,
 and he was to take care, not only of the Peace,

but of Judgment and Justice, with relation to them, among the rest of the Subjects of his truly Imperial Crown.

And the full Forfeiture, which may well be supposed to be restrained to Capital Cases, was to be to him alone.

He further in Affirmance of the Common Law Enacts,

" That all Free-men Affirm with Faith and
" Oath, bind themselves that within and without
" the whole Kingdom, which in former times
" was called the Kingdom of *Britain*, they will
" be Faithful to King *William* their Lord and
" King, with Him, preserve his Lands and Ho-
" nours with all Fidelity, and Defend them
" against Enemies and Foreigners.

This was but King *Arthur*'s provision for the Allegiance of all Men within the Island, to the Imperial Crown of the Kingdom; how many soever might Reign within the *Island* with the Authority of Kings over them, to whom the Monarch left the immediate Government of any particular part.

The Law by which all were Governed was One, not only in relation to the principal Rights of the Kingdom, but the manner of private Men's enjoying their Estates, and standing to, and obtaining Justice, was the same in the main, with allowance for particular Customs, which obtained so long in several parts of the Kingdom, that they were of the same Force as if in a *Common Council* of the Kingdom it had been agreed, that such places should use such Customs.

The Feudal Law, which took in the principal part of the Common Law, as it has evidently appeared to have been here long before the time

time of W. 1st. the Scots agree to have prevail'd Sir T. C. among them in the time of their Malcolm the 2d. who Reign'd in King Edgar's time; and finding Wardship among them at that time, their Writers without the least colour ascribe the Law for it, to their Malcolm the 2d. of that time.

As appears above, this was the very Malcolm, who was one of Edgar's Barons, and King of the Cumbrians before ever he was King of Scotland.

Besides what the Course of the Antient Historicks lead to, it's express that the Scots and Picts were under the Danelaga, and Govern'd by the Crown of England.

" In an Account of the number of Provinces, Countries and Counties, which of right belong, and without doubt appertains to the Crown f. 1. 2. and Dignity of Britain , Albany , as I have observ'd above, is one of the number.

Then distinguishing the several Laws or Customs, by which the several parts were govern'd, tis added,

Danelage pertinent 5 Provincie cum omnibus suis Appendiciis scil. Deira, quæ nunc vocatur Northumberland , scil. tot-ter. quæ est inter magnum fluvium Humbri & Tede fluvium et ultra usq; ad flumen Frith, scil. Looina, & Galweia, & Albania tota, quæ nunc Scotia vocatur, &

To Danelage there belong 5 Provinces, with all their Appendages, viz. Deira which now is call'd Northumberland, viz. all the Land which is between the great River Tweed, and the River Firth, viz. Lodeny or Lothian, Galloway and all Albany, which now is call'd Mor-

Moroina, usq; ad Norwegiam scil. Kathenisia, Orkney, Enchegal & Man, & Orcas, & Gurth, & cæteræ Insulae occidental. Oceani circa Norwegiam, & Daciam; & Fyftonshire, quod Latine dicitur quindecim Comitatus, scil. Everwykshire, &c.

Scotland and Murray Land, as far as Norway and Denmark, viz. Kathereness, Orkney, Enchegal, and Man, and Orc, and Gurth, and the rest of the Isles of the Western Ocean about Norway and Denmark; and Fyftonshire, which in Latin is call'd the 15 Counties, to wit, Yorkshire, &c.

Here 'tis observable,

1. That agreeably to what has appear'd all along, the *Lotbians* were accounted no part of *Albany*.

2. This agrees with an other Authority cited above, that neither was *Murray Land*.

3: That *Northumberland* is there shewn to be the Land possess'd by all Persons on the North of *Humber*.

4. All those Northern parts of the *British Island* were under the *Danelege*, that part of the common Law of *England*, at the time of that Account, which seems coetaneous with the Confessor's Laws, a transcript of which is in the same *M.S.* and among them, our *Glanvil*.

That till *H. 2d*'s time, and since, the Laws of *England* were the rule of Government in *Scotl.* will be very evident if there be positive proof that the first Body of Laws which they receiv'd was the Book which was compil'd by *H. 2d*'s Chief Justice *Glanvil*; and this was taken as a Rule for the Judgments there, for a considerable time after

after the Reign of H. 2. Now as to this Matter, their *James* the 7th. our first, whom all must agree to have been a Man thoroughly Learn'd, and Conversant with all the Antiquities which the Scotch had; observing the Uniformity of Government between *England*, and *Scotland*, assures his *English* Parliament, that the Scots have no common Law, but that which is call'd *Jus Regis*; that *James* the 1st. bred here in *England*, brought the Laws thither in a written Hand.

*Inter Op.
Regis Jac.
Speech in
Parl.
An. 1607.*

He shews further, that the civil Law which has obtain'd much among them, "was brought in by *James* the 5th. out of *France*, yet not to Govern absolutely by the Civil Law, as in *France*. He adds,

"The Civil Law is admitted in no other Cases, but to supply such Cases wherein the Municipal Law is defective.

This *James* the 1st. did not Reign there till after our *Ricb. 2.* Before that they were it seems uncertain what their Municipal Law was, till *James* the 1st. brought a Body of Laws out of *England*: if this was their *Regiam Majestatem*, or *jus Regis*, which according to King *James*, was their Common Law, or they had none, but as they were to receive it from time to time from *England*; and if this *Regiam Majestatem* appear to be our *Glanvil*, then it will appear that the Law of *England*, receiv'd from hence is the Common Law of *Scotland*, *Quod erat demonstrandum.*

Now to prove that this was the Common Law of *Scotland*, I may join our Learn'd Prelate, who is such an Admirer of Sir *T. Craig*, and

and Sir Thomas himself, to put the Matter out of Dispute.

*Scotch Hist.
Libr.
p. 257.*

p. 258.

Our Bish^{ps} says,

" The first Authentic Body of Laws of the Kingdom of Scotland, (if even that may be justly esteem'd so) is their *Regiam Majestatem*, which has it's Name from the two first Words in it, as *Glanvil's Book* might have been call'd *Regiam potestatem*.

Then he brings in Sir T. C. as objecting against that Body of their Laws, that the intent of that Author could never be to profit their People, or prescribe Laws to them.

*Autor enim istius Libr.
fuit Ranulphus de Glan-
villa, qui tractatum de
Legibus & consuetudinibus Angliae,
Regnante H. 2. edidit.*

For the Author of that Book was Ranulph de Glanvil, who publish'd a Treatise of the Laws of England in the Reign of H. 2.

And in an other place as our Prelate observes, " Sir T. C. shews that several English Customs are in these Books alledg'd, as part of the known Law of Scotland. Which he says never had footing in that Nation.

Against which his Lordship produces Sir T. C. himself, with an Epigram recommending it as Authentic. But what puts the Matter out of all Dispute is; In a Commission of K. Charles the 1st. with Consent of the Estates of Parliament, for the Composing a new Body of the Laws of Scotland, particular mention is made of the Book entitled *Regiam Majestatem*, which contains one Record of the Ancient Laws, and Customs, observ'd with in the said Kingdom.

" It's

" It's Authority is expressly asserted by some Acts of Parliament , and by others we are referr'd to it , for the manner of Process in Trespasses , Essoins , Affizes , or Enquests , &c.

Thus as it has appear'd that till H. 2d's. time they were under the Law, as well as King and Crown of England, so they were long after, and yet continue in the Main.

And as the Laws of the Confessor, and W. r. Concurrrenee with the History of all pass'd times, shew that the Scots were in a true Sense liege Subjects of the Crown of England; they have Recogniz'd this not only by their Homages and Oaths of Allegiance, but in submitting to it's Laws.

C H A P.

edol vd batolla vleyns, et yllynd
etis tis credit, vd bryt, tis mord
m' d'c'nt' to common, tis tis
etis p'sd.

C H A P. XXVIII.

*A Confirmation from the Scotch Chronick,
of the Proof that Scotland has been Gov-
ern'd by the Laws of England. Of the
use of this in refuting Sir George Ma-
chenzie's Arguments for the absolute
Power of the Kings of Scotland. Of the
necessity of History to help in determining
Points of Law, particularly in Relation to
Descents of Inheritances. Wherein Cal-
vin's Case is consider'd. And Sir Thomas
Craig's notion of Aliens and Denziens re-
futed.*

IN further Confirmation of the Proofs above
that the Scots were under the Laws of Eng-
land, before and after H. 2d's. Reign, I may
observe that in the 28th. of H. 3. a Charter
pass'd at the importunity of the Baronage of the
Realm, wherein it was declar'd to be the Right
of this Kingdom to have the Chief Justice
choose in Parliament.

If therefore it shall appear that the Chief
Justice of England, was Chief Justice of Scotland,
no Man surely will then deny but Scotland was
truly under the Allegiance of the Crown of
England.

Wh-

Whether it were thus or no, I appeal to the Scotch Register of *Mailros*, of the Year 1221, which was the 5th. of H. 3. in that King's Minority, when the *States* of the Kingdom, being Unanimous, preserv'd to the Crown the quiet Possession of its ancient Right of Superiority over *Scot land*.

That thus it was, appears by this passage in the Register.

Eodem anno tradita
Domina Margarita filia
Recordationis Wil-
li. Regis Scotiae, & So-
ner Domini Alexandri
Regis Domino Huberto
de Burc, Justiciario
Anglie & Scotie, per
Consensum utriusq; Regis
Angl. scil. & Scotie,
& Consilium Magnatum
utriusq; Regni.

The same Year La- *Chron. de*
dy Margaret, the *Mailros*.
Daughter of William *An. 1221.*
of Pious Memory, *5. H. 3.*
King of Scotland, and
Sister of the Lord King
Alexander, was given in
Marriage to Lord *de*
Burc, to wit, the Chief
Justice of England and
Scotland, by the Con-
sent of both Kings; that
is to say, of Eng-
land and Scotland, and
the Counsel of the
Great Men of both
Kingdoms.

It appears that *Hubert* being Chief Justice of England, had Scotland, as annexed to his Office; for he manifestly was Chief Justice of both Kingdoms before this Parliament, in which the Match was agreed.

And farther the Daughter of H. 3d's *Hona-*
gar was not Married without the Consent of
him and his Great Council.

This

Jus Ragi.
nn. p. 68. This being of the time of Alexander the 2.
I cannot pass by the infincerity of Sir Georg
Macbenzy, who among their Kings, who as
he pretends made Laws without any Consent
Names Alexander the 2. and David the 1st. and
2d. in whose Laws he affirms there is not so
much as mention made of the Nobility, or the
Parliament, in the very beginning of the Parlia-
ments.

And yet he could not but know that their
Laws Printed by Shene manifest the contrary.

The attending to what I have shewn of the
force of the Law of England in Scotland, effect-
ually removes all colour from the pretence of an
absolute Power in the Kings of Scotland.

Sir G.W'.
Jus Ragi.
nn. p. 56. " Thus when he says, in the Preface to our
Book of Law call'd Regiam Majestatem; It is
acknowledg'd that the King has no Superior
except the Creator of Heaven and Earth,
who governs all.

This is easily answer'd, by observing what is
confess'd by Sir T. C. and will be evident to any
body who considers their Regiam Majestate,
that this was our Glanvil, and the Majesty
of the King of England, which tho' Superior to
Scotland, by the undoubted Constitution of the
English Monarchy was always limited by Laws.

p. 51. And if it be a Maxim in their Law, that
no Man Posseſſ any thing but by the King's Author-
ity, and there be truth in what he cines of
the Law of their King Malcolm Canmore, that
the King Distributed the whole Land of Scot-
land to his Men; The King, according to the
truth of Story, must have been the British, or
English Monarch. This rightly apply'd will

p. 52.

root

root up every supposed ground for the Absolute Power of the Kings of Scotland: if it be from the Patriarchal Power, going along with a Series of Successions in the right Line from their imaginary first King, without any Election of the People; Prior to that fancied Right, the Investiture from the Crown of England, and permission for their Kings in such Successions, while they Acted as became Homagers; but especially new Grants rather than bare Investitures after they had Forfeited, demonstratively shew, that whatever Pretence other Kings might have to an Absolute Power as God's King, without any Authority from the People, or Restraining by them, Kings of Scotland cannot have it, being the Crown of England's Kings.

As the consideration of our English Laws and History, explains and limits the Right of the Crown, it may further appear that the chief Points of Law, in relation to the Union propos'd, and the Rights of the Subjects to Inheritances, cannot receive any tolerable Solution, without some Knowledge in History.

After the Accession of James, King of Scotland, to the Crown of England, 'tis well known, he very much laboured an Union of both Kingdoms in a true sense, by making them one; and if either side had attended to the Truth of Fact, or the obvious Consequences of it, the Controversie had not been so perplex'd as it has been. The Scots, as appears above, went upon the true topic, if they had taken due means to preserve their Priviledge; when to promote the Succession of their King to the Crown of England. They urged that they were not Aliens, but Denizens:

nizens: and this they had from our English Lawyers, which was not only an extrajudicial Opinion, but a solemn resolution of the Judges of both Benches, in the 14th. of Queen Elizabeth, at a time when they could not be thought to give such a Judgment out of any Byass towards the Scotch Succession; it being while they might reasonably expect that Queen Elizabeth would have Issue of her own, or agree to Settle the Crown by Act of Parliament. The L. Chief Justice Vaughan, to whose Authority I must needs pay great Deference, and yet take leave to shew his Mistake in relation to the Homage, agrees, that the King of Scotland's holding his Kingdom as Homager and Liege-man to the King of England, is the reason of the Case, 14 Eliz.

Vaughan's Rep. F. 28. in the Case of Craw and Ramsey. 21 & 22 Cor. 2. in Lord Dyer, where " a Scotchman being An-
" raigned for a Rape of a Girl under seven
" years of Age, and praying his Tryal per medietu-
" tem lingua, because he was a Scotch-man, it
" was denied him by the Opinion of the
" Judges of both Benches, for that among other
" reasons, a Scot was never accounted an Alien
" here, but rather a Subject. So are the Words of
the Book. After this, when a Scotch-man was
King of England, and no Man could hope to
make his Court by holding, that the Crown of
Scotland was under the Crown of England, came
on the Question, Whether one born in Scotland
after their King came to be King of England,
might Inherit Lands in England? The Learned
Men of the House of Commons, who foresaw
that as Matters then stood, this would bring in
an Inundation of Scots, nor was any sufficient
recompence for this to be then expected, strenu-
ously opposed it, as the Scots were Men of another

ther Allegiance, that is, though they paid Allegiance to the person who was King of England, they did it to him only as King of Scotland. This was then the Fact, and the Right of the Crown of England was waved, in Complement to the King, from whom they then expected Glorious Days.

How much soever they have been condemned, who distinguish between the Natural and Politick Capacity of the King; 'tis plain, the Judges in their Resolution of Calvin's Case, went upon supposing Allegiance due to the Person of the King, divided from the consideration of his being Seiz'd of the Crown of the Kingdom, and the Rights belonging to it.

If we do not separate what the Law has joyn'd so closely together, that they cannot be parted, while the person is King, in the Eye of Law, till according to the Confessor's Law, *nec nomen Regis in eo constabit*, not so much as the name of King shall remain in him; we may easily observe how inconclusive the Authorities are which were relied on, for the Resolution in Calvin's Case: and yet the Judgment happened to be right.

The Case of Copleyke, which, as Chief-Justice Coke said, Over ruled Calvin's Case, Calvin's Case f. 10. was no more than that in the time of Edward the 1st, the Chief Justice disallowed the Plea, that the Plaintiff was not to be Answered, being a French man, and not *in suo*, at the Faith of England. Upon

(* U) which,

which the Council pleaded that he was neither
of the Allegiance of England, nor at the Faith
of the King.

Here 'tis obvious.

1. That both the one and the other was
needful to be mention'd in pleading.

2. If they are not look'd on as insepara-
ble, but the one to be divided from the o-
ther; then, tho' a Denizen must be *faithful* to
the King, his Allegiance is to the Kingdom, that
is, to the Crown of the Kingdom.

3. As this divided Sense is absurd, 'tis Man-
ifest that Allegiance is due to the King by
reason of the Crown of the Kingdom.

Vaughan's
Reports,
£ 286.

The other Cases rely'd on, as Chief Justice
Vaughan observes, are, that the King of Eng-
land's Subjects of Normandy, Britain, Aquitaine,
Anjou Gascoign, Guien, Calais, Jersey, and
Guernsey, Isle of Man, Berwic, and other parts
of Scotland, Ireland, Tourney, &c. (most of
them Dominions belonging to the Crown of
England) were never accounted Alien.

And if so, Chief Justice Vaughan ask'd the
Question. "What Inference could be made
" from the Resolution of Calvin's Case? He add'd
" that because the Kings Natural-born Sub-
" jects of Dominions belonging to the Crown
" of England as these did, were no Aliens
" England, therefore that Subjects of a D-

" mini-

"minion not belonging to the Crown, as the
"Ponstati of Scotland are, should be no A-
"liens in England, Non sequitur.

Here this great Man did not attend, to the Consequence of his own admitting, that some of these did not belong to the Crown of England: for if any of them did not, then there's no doubt but the instances of such were directly to the question in *Calvin's case*; tho' in truth every one of them became annexed to the Crown. Neither did his Lordship attend to the Resolution 14°. Eliz. shewing that the Question was the same in relation to Scotland, being of the Allegiance of the Crown of England, as Places suppos'd to have belong'd only to the King.

Nor yet did he attend to the Case of the Dutchy of Lancaster, 4°. of the Queen, whereby it appears that not only then, but 1°. of H. 4. it was held that the private Inheritance of the King, upon his coming to the Crown, was so annex'd to it, that it could not be sever'd from it without Act of Parliament. And whatever Land, the King Purchases, he is Seiz'd of it *jure coronæ*, in his Royal Politic capacity, not in his Natural.

Plowden.
Case of the
Dutchy of
Lancaster.

1714.
f. 16
Anno 150.

This answers all the Instances of a distinction of the Capacities that can be given: and seemingly most full, will appear to have been mis-understood, both by the Judges, 7°. Jac. 2. and by one of no less Judgment in a Book publish'd by him 9°. Eliz.

Stamfords
Expos. of
the Kings
Prerogat.
An. 1567.

p. 6.

The Stat. de Prerogativa R^egis, Is Printed as
of the 17th. of Edward the 2d. but, Stamford
observes that in the 15th. of Edward 4th.
Littleton doubted of the time of making the
Statute ; yet he says, " without doubt it was
" made in King Edward the 2d's. Reign,
" and that plainly appears by these words,
" *Et illa voluntas tempore Regis H. patris Regis*
E. estimari consuevit, &c. which words, say
he, were not written in King Edward the
1st's. days, for then the words had been *Patrⁱs*
nostri.

But I take this to be an argument that they
were of the time of E. 1. for otherwise, *Patrⁱs Nostri*, would have been added to Edward.
And besides, not to heap instances in the Pre-
face to the Statute of Westminster the 1st. the
3d. E. 1st. 'tis said *Ceux sont les establissemens le*
Roy Edward Fitz le Roy Henry.

Having thus ascertain'd the Reign, in
which the Statute De Prerog. Regis was made,
I shall transcribe the 12th Chapter, which
has been apply'd to this Question.

Stat. de
Prerog.
Regis Cap.
2.

" The King shall have the Escheats of the
" Lands of Normans, to whose Fee soever
" they belong, saving the Service apper-
" taining to the Chief Lords of the same
" Fee.

" And this also is to be understood where
" an Inheritance descendeth to any that
is

" is Born in parts beyond the Sea, whose Ancestors were, from the time of King John, under the Allegiance of the Kings of France, and not of the Kings of England, as lately it happen'd by the Barony of Monmouth, after the Death of John of Monmouth, whose Heirs were of Britain, and other places. K Henry by the foresaid occasion recover'd many Escheats of Normans Lands out of the Fees of other Men, and gave them to be holden of the Chief Lords of the Fee by Services due and accustom'd thereto.

That this was true in fact, may be seen by many Records in the Exchequer, of Escheats of Lands of Normans, and others.

The words of the Law and the Instances given of it's having obtain'd are so plain, that one would wonder so Learn'd and judicious a Man, as Judge Stamford, should mistake them, as he plainly did in saying,

" By this Branch it should appear, that Stamf. der
" at this time, Men of Normandy, Gascoign, Prerog..
" Anjou and Britain were Inheritable with- p. 392.
" in this Realm as well as English-men, be-
" cause that they were sometime Subject
" unto the Kings of England, and under
" their Dominion till King John's Time, and
" yet after His Time, those Men (saving
" such, whose Lands were taken away for
" Treason) were still Inheritable with-
" in this Realm, till the making this Sta-
" tute.

This

This Interpretation of that very great
Lawyer,

1. Is contrary to what himself held at the beginning, that the whole Statute of the King's Prerogative doth *but confirm and declare what was the Common Law before.*

2. 'Tis directly contrary to that part of the Statute on which he here Comments, shewing that from King John's time, all in those parts, who withdrew from the Allegiance due to the King of England, and Submitted to the King of France, Forfeited a Traitors; and therefore, whoever was immediate Lord of the Fee, their Lands El cheated to the Crown.

3. The Act shews, That before the Making and Publishing this Declaration of the Law, the Crown, in the Reign of *Henry the 3d.* took the Advantage of the Forfeiture.

4. That before that Traiterous Revolt Normandy, and those other Parts were held to be annexed to the Crown of England for otherwise People there could not have been Traitors in Revolting.

5. If after that they are to be accounted not so properly Traitors as *Aliens*, must be as they are *Denizens* of another Kingdom; and consequently, their not b

ing *Aliens* consisted in being *Denizens* of England.

"Tis plain, according to the known Rule in Law, of Inheritances Vested in the King of *England*; *Normandy*, and other parts beyond the Sea, though they first came by other Right or Means than the Crown did, were annexed to it by operation of Law.

As the Lord Coke rightly observes, " All ^{1 Inst. F.} the Lands and Possessions whereof the ^{15. 6.} King is Seized, *jure coronæ*, attend upon, and follow the Crown; and therefore to whomsoever the Crown Descends, those Lands and Possessions Descend also; for the Crown, and the Lands, whereof the King is Seized *jure Coronæ*, are *concomitantia*.

That in the Judgment of all our Parliaments and Lawyers, from the time that William the 1st. was King of *England*, to John's losing *Normandy*, that was accounted an Appendage to the Crown of *England*, is manifest, not only by the allowing persons born there to be *Denizens*, though the Dukedom, according to the Right of Proximity, and possession for some time, was not in the King of *England*; but the English Nation's constant Asserting the Title of their Kings against Duke *Robert* and his Heirs.

If the Statute of the King's Prerogative, Declaratory of the Common-Law in this Matter, had been duly attended to it would have shewn the plain ground of the Priviledges to which the *Postnati* in the time of J. 1. were Entituled, and why this could not extend to them who were Born before he had the Crown of England.

At first View, without searching deeper it might seem as if the Right to the Priviledge arose from being Born while the *Homage* of the Kingdom of Scotland was Suspended, the *Homager* being the only person who could take it, and because of an inability to do *Homage* to himself, it could not in the Eye of Law be withheld, or denied or rather as the *Fee* was thereby *confounded*. Yet upon another Account, not observ'd in *Calvin's Case*, nor elsewhere that I remember; it may be evident that Men Born in Scotland, for some Years after King James came to the Crown of England, neither were, nor could be *Demesnes* of England.

That they were not, either according to the Common-Law of England, declared by the Statute of the King's Prerogative, nor even in the judgment of King James the 1. and his Parliament in the Fourth of his Reign, appears by the Act, for the utter Abolition of Hostility, and the Dependance thereof, between England and Scotland.

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By that Act, several Laws made in the Reigns of R. 2, H. 5, and 6, and other English Monarchs importing the continuance of a State of Hostility are repeal'd, among the rest an Act 7 H. 7, which is an effectual answer to Sir Thomas Craig's Arguments, that the Scots, tho' they continued Hostiles, were in the Eye of our Law accounted ~~Dominions~~, for it had provided that all Scots not made ~~Dominions~~, should depart this Kingdom within 40 Days after Proclamation.

The Act repealing that Statute 7 H. 7, and others, did it, seeing all Enmity and Hostility of former times between the two Kingdoms and People, was happily taken away, and was under the Government of his Majesty as under one Parent and Head turned into Fraternity or Brotherly Friendship. Yet 'tis plain they neither thought King James's Accession to the English Throne, of it self made void the former Laws, nor that the Hostile State, was absolutely taken away even by that Statute.

For it was but provisional, and tho' several particulars were Enacted absolutely, it was provided nevertheless, that "none of the Articles "Branches or Clauses above-said should take effect, until several Acts of Parliament of the Realm of Scotland should be repeal'd.

Among others one, making it Treason to remain in England, without Licence of the King of Scots; another of the like Penalty for making assurance for taking protection from the English, for Lands, or Goods; another requiring all Men to be ready for defence against England.

And what is very remarkable, an Act enjoining the Warden to put in a Bill, the Names of all English men that occupy Land in Scotland, and seek redress according to the Treaties.

Where 'tis Evident, that without particular provision, *Englishmen* were not counted inheritable to Lands in *Scotland*.

Whether all those Laws, or any of them, were repeal'd in *Scotland*, before the Resolution in *Calvin's Case*, was so far from appearing to the Judges then, that they never enquired into it; and yet all must agree, that the *Scots* could not be entitled to the Privilege of *Denizens*, till those Laws which kept them out of the Protection of the *Crown of England*, were repeal'd.

If that *Parliament* had any share of the new light which the Judges had ^{7°} of that King, they must have held the State of Hostility to have so far ceas'd, by reason of the *Allegiance* which the People of both Nations, ow'd to the Person of King *James*, that all the Laws which kept them at any distance, fell of themselves for want of subject Matter upon which they could Work.

'Tis certain that till those Laws which are mentioned in that Statute were repeal'd, the *Scots*, who, they ow'd Allegiance to the *Crown of the Kingdom*, were no more Entitled to the privilege of *Denizens*, than the People of *Normandy*, who had put themselves under the *French King's Protection*.

25. E. 3. The Statute 25 E. 3. Declaring who shall be accounted *Aliens*, and who *Denizens*, speaks of some Persons born beyond the Sea, out of the *Ligeance of England*, who are thereby enabled to enjoy Inheritances, after the Death of their Ancestors, in all Parts within the *Ligeance of England*, as well as those that should be born within the same *Ligeance*: and enables all others which should be born without the *Ligeance of the King*, whose Parents should be at the *Faith and Ligeance* of

of the King ^{**} of England, so that the Mothers
"past the Sea by the Licence and Wills, of their
"Husbands.

Whereby 'tis manifest that the *Ligeance* of
England, and the *Ligeance* of the King of England,
are one and the same, without any difference but
in Phrase, being in nature the same individual
Allegiance.

The Lord Chief Justice Vaughan, who was of
too great discernment to swallow all that pass'd
for Reasons, upon which the Resolutions in Cal-
vin's Case seems to have been grounded, says,

"The adequate reason being found out why Vaughan's
"the Postnati are not Aliens, will determine the Rep. F.
"point which was in question before him; this 286.
"was of an Act of Parliament in Ireland, Na- Craw. v.
"turalizing one born in Scotland, before King Ramsey.
"James's coming to the Crown of England.

That of the Postnati he says, was not be-
cause they were natural Subjects to him that was
King of England; for then the Antenati of Scot-
land would be no Aliens, they being Natural
Subjects to him that is King of England, as well
as the Postnati. No doubt but this would follow,
if being a Denizen born, consisted barely in being
born Subject to the King, without regard to the
Crown of the Kingdom: and will go farther than
the great Man could allow it, in consistency with
the Arguments in Calvin's Case; which happened
to be a right conclusion tho' the Premises did
not Warrant it. His Lordship, adds,

2. "It was not because they were Natural Sub-
jects of Dominions belonging to the Crown of
England; for then the Postnati would be Aliens
in England, for they are not Subjects of a Do-
minion belonging to the Crown of England.

Fol. 279.

Before which he had said to the same purpose,
 " a Subject born in any Dominion belonging to
 " the Crown of England, is inheritable in Eng-
 " land, as well as native English-men; so the na-
 " turalborn Subjects of Ireland, Guernsey, Jersey,
 " Normick, and all the English Plantations; inheriti-
 " but, the specifick Reason of their Inheriting
 " in England, is not because they are born in
 " Dominions belonging to the Crown of England;
 " for if so none could inherit who wanted that,
 " and then the Postnati of Scotland should not
 " inherit, for Scotland is not a Dominion be-
 " longing to the Crown of England but to the
 " King of England.

Fol. 279.

3. Both there and elsewhere he concludes; " It
 " remains then the reason can be no other but be-
 " cause they were born under the same Ligeance
 " with the Subjects of England: which, says he,
 " is the direct Reason of that Resolution in Cal-
 " win's Case.

But this is either a distinction without a dif-
 ference, or rather nothing at all; bat owning
 that it was only so resolv'd, because it answer'd
 the present occasion.

For he confesses that upon the reason then gi-
 ven, it labours with innumerable difficulties whe-
 ther you make the Allegiance to the King alone,
 or to the Kingdom: and therefore to shew that it
 was a judgment without reason, cuts the Gordian
 knot, and says, they must be born under the same
 Allegiance with the People of England: but whe-
 ther that was to the King, or Kingdom, or both,
 is left in the Clouds.

Chief Justice Vaughan says,

Fol. 28.

" The time of Birth is chiefly to be considered:
 " for he cannot be a Subject born of one Kingdom,
 that

" that was born under *Ligeance* of a King of an
" other Kingdom; albeit afterwards one Kingdom
" descended to the King of the other.

This is not true unless explained, and limited
to two *independent Kingdoms*: for the *Scots*, no
other *dependent Kingdoms*, have been always in
right under a *double Allegiance*.

Then take it as meant of two *independent Kingdoms*; and besides that it goes upon beg-
gling the question, as if the dependency of *Scot-
land* was determined; it makes nothing to the
point then in dispute: being no more in effect,
than that a Man can't be born in two distinct
independent Kingdoms, and consequently can be
a *Natural born Subject* of but one of them. But
if notwithstanding the Descent of one to the
King of the other, the Kingdoms continue di-
stinct and *independent*; what shadow of Rea-
son has been assigned why they who were born in
one of them, after the descent of the other to
their King; should be *Denizens* in that other, by
Virtue of that Accession to their King.

If the Kingdoms and Laws, remain entirely
distinct, so must the Privileges.

That extraordinary acute *Chief Justice* shew'd
himself sensible, that his Predecessors were far
from Arguing with any strength in *Calvin's Case*: yet as he govern'd himself by their extra-
judicial opinion, that they who were born before
King James had the Crown of *England*, were
Aliens, without attending to the true Reason ap-
pearing by the Statute of the *King's Prerogative*;
he was obliged to hold that the Homage for the
Kingdom was determin'd; tho', as has appeared,
the right of Homage continu'd, and yet the Pri-

vilege arising upon the due performance of it was suspended.

As the resolution in *Dyer* is Express, that the *Homage* continued; the right of it, is so far from being prejudiced by the Resolution in *Calvin's Case*, that it might rather seem the only true Reason for the Judgment, allowing the Privilege of *Denizens* to all who were born in *Scotland* after the King, who was an *Homager* to the *Crown of England*, obtained the imperial Crown.

Yet in truth there was a more weighty Reason upon the Rule of Law, contain'd in the Statute of the King's Prerogative: that of what ever Inheritance King *James* was seiz'd upon being King of *England*, he was seiz'd in the Right of the *Crown of England*; and, thereby, as soon as the State of War between *England* and *Scotland*, was remov'd by Acts of the respective Parliaments, all who were born in *Scotland* from that time were *Denizens of England*.

Thus the Resolution in *Calvin's Case*, if the *Scots* had repeal'd their Hostile Statutes, happened to be right, otherwise not.

Craw and *Ramsey's Case*, which occasion'd Chief Justice *Vaughan's Enquiry* into the Grounds of the Judgment in *Calvin's Case*, was of a Naturalization in *Ireland*, of one born in *Scotland*, before King *James* came to the *Crown of England*.

One would wonder that a Court compos'd of *vid. Vaughan.* so Learned Judges, should for any time be divided upon so plain a Point, as that a Member *ban Ed.* of *England* cannot give the Privilege of *English Birth* to themselves, who had it no otherwise than by such Gift.

2 George. 3d. 1c. Afterwards judgment was given that such *Na-*

Naturalization could not extend the Privilege farther than Ireland.

This is one Resolution contrary to the Supposal of the Judges 7 J. 1. as if the Privilege of Birth followed the Allegiance due to the Natural Person of the King.

If it had, the King's concurring to an Act of Naturalization in Ireland, would have given the Privilege throughout all places within his Allegiance.

A few Years before the Judgment in the Case of *Craw and Ramsey*, there was a Case in the Exchequer-Chamber, of a Descent between Brothers born in Scotland, before King James came to the English Throne, and Naturaliz'd by Act of Parliament in England. One would think this ^{1 Levise.} _{p. 59.} *Collingwood v. Pace.* could have rais'd no dispute among Learned Men: yet it was matter of solemn Argument before it was determin'd, that the Brothers Naturaliz'd were inheritable to one another.

I mention not these Cases as if the Right of the Kingdom could be concluded by Judgments in Westminster-Hall, if they were against the Right of the Homage, as they were not; but to shew that our Learned Men need not have been so perplex'd in their Notions, if they had follow'd the Divine Rule to stand upon the *Ancient Ways*. State su-

It must be agreed, that as early as the Reign of E. 4. there have been Acts of Parliament for Naturalizing Men born in Scotland; which not only shew, that tho' they were of Right within the Allegiance of England, they could not have the Privilege, for want of some necessary Qualification; but that the Allegiance was due to the Crown of the Kingdom, not barely to the Natural Person of the King: for otherwise the King might

might have capacitated them without an Act of Parliament.

And farther, it shews that it was not enough to come to the Faith of the King, while he was of a Kingdom, which withdrew its Allegiance: For it being of the *Faith of the King*, had been enough; *local Allegiance*, and actually taking the Oath to the King, with Letters Patent of Denization, would give the Privilege of English Birth.

*I Inst. F.
S. a. and
129. a.* But notwithstanding such Letters Patent to a Scotch Man here, who had taken the Oath of Allegiance, he continued an *Alien* as to his Birth, and in regard to the Inheritance of any Ancestors. He had indeed a new Capacity: whereby the King gave away no Property, or Right of any Body but himself and his Successors.

Since the Right of *English Birth* could not be given but by *Act of Parliament*, in which the Consent of every Person in the Kingdom is involv'd; 'Tis evident, that the *Judges* in their Arguments inducing the Resolution in *Calvin's Case*, unwarrantably separated the *Natural Person* of the King, from the *Politic*, from whence the regal Authority, or *Crown of the Kingdom* is inseparable.

Sir *Thomas Craig*, who seem'd to think his Readers would not have Judgment to discern, how his chief Arguments to prove that *J. I.* before he was admitted to the *Crown of England*, had an *Indefeizable Right*, make against the *Independency of a Crown*, all whose Subjects he contends to be *Denizens*, that is, in truth, within the Allegiance of *England*; argues, that they were so reputed at the making of the Statute 25 *E. 3.* being known to be then within the Power of *England*,

England. But is not aware of the Maxim, that the reason of the Law ceasing, the Law ceases.

Nor is there any manner of consequence, that because the Scots were Denizens, while they kept to the Duty of their Allegiance, they continued so, notwithstanding a Forfeiture of the Privilege.

Tho' he contends that no Man was accounted an Alien within the meaning of the Statute 25 E. III. who was not born beyond the Seas, and at that time no body within the Island of Britain might be within the reach of it, as the whole Island paid Subjection to King Edward III. yet he allows the Definition of a Man of Foreign Birth to be

"One who is born out of the Bounds of the ^{of the Su-}
Territory, or Jurisdiction of any Sovereign ^{cession.}

"Prince. Fol. 252.

One while, he not being acquainted with the Statute of the King's Prerogative, says,

"Should I be Contentious, or Stiff, I might ^{Fol. 253.} affirm that there is no such Law, or Statute, by which Foreigners, or those born out of the Kingdom, are excluded from the Succession of their Inheritance that belongs to them in Eng-

land.

Indeed if it belongs to them, no Law excludes them from it; but his meaning must be, that no Law makes them less capable of inheriting, than Natural born Subjects: Yet this is but one of his usual Inconsistencies, for not long before he had said,

"They are in a great Error who think, that ^{Fol. 253.} that Law concerning Foreign Birth is peculiar to England, and that it proceeds from their Municipal Law. For there is scarce any Country in Europe,

"Europe, which has not the same Law, &c. The
"reason of that Law flows from the Feudal Law,
"of which the First and Chief Rule is, that one
"and the same Person, cannot be a Liege Man,
"or Vassal of two Superior Lords.

But he mistakes both the Law of England, and
the Maxim of the Feudal Law, which he would
apply. For,

1. As has appear'd above, tho' the Scots did
always owe Liege-Homage, yet they were not
entitl'd to the Privilege of Denizens, while
they withdrew it. And this according to the
Feudal Law, for want of Investiture with the
Fee; or else, because of the Forfeiture of the
Privilege.

2. By the Feudal Law Men might be Homa-
gers to several Lords superior to the Party, and
one over another till they came to the supreme;
for whose Homage there always was a Salvo.

C H A P. XXIX.

*The First to prove, that the Subjection Evi-
denced by Liege-Homage, is still due from
the Kingdom of Scotland to the Crown
of England.*

*Of the time that Sir T. C. supposes the Scots
have been free from Homage.*

*Of the release i E. 3, and Restitution in
his Reign, if the Release ever had Force.*

Page 64. " **S**I R Thomas Craig says, it will be manifest
"from the Nature of a Fee, to any Man
"who is not already prejudiced, or sworn to
the

"the Sentiments of another in either of the Nations, that the King of Scots owes no Homage to the King of England; for except they prove the Affirmative, the Negative is evident of it self, as having the Presumption of Law on its side; for by the Testimony of the English themselves, we have been in Possession of our Liberty for these three Ages last past, and acknowledg'd no Superior.

'Tis observable, that this was writ before his Treatise of the Succession, which was dedicated to J. 1. Jan. 1. 1603. therefore now it must have been free for above 400 Years, if Sir Thomas was in the right. But that unluckily for him falls to be in the 30th or 31st of the Reign of E. 1. who was then in full Exercise of his Right. And whereas he will have the Testimony of the English to be on their side, as if their Freedom were of so ancient a Date; he owns that Mr. Hol-
lingshead affirmed H. VI. forc'd James King of Scots to do Homage, but Sir Thomas being as little acquainted with the latter part of the English and Scotch History, as with the earlier, says, no English Historian, that I know of makes mention of the same.
Page 413.

This he might easily have found in other English Historians of unblemished Credit; neither is it without Proof from record. Besides, it will appear, that his admired Treatise of the Succession, unwarily yields Homage to have been paid for the Kingdom of Scotland to Edward 3. and that by a rightful King of Scotland.

It must be agreed, that our Vittorius King Edward 3. being but 14 Years old when he succeeded, upon the deposing that Pusillanimous Prince, Edward 2. Sir Roger Mortimer, who thought

thought by the Murder of the Father, and Interest with the Mother, to secure to himself the Government of the young King, and his Kingdom; as he knew the Nobility of England would not bear his Usurpation of the Sovereignty, found it his Interest to engage the Scots by the highest Obligation: and therefore prevail'd upon the young King to Sign a Patent, purporting a Release of the Ancient Homage. That this was done without the Consent of the States of the Realm is evident; for, among the Articles upon which Mortimer was impeach'd in Parliament, Attainted, and afterwards Executed for High Treason one was,

Vil. Rot.
Pa. l. and
Grafton A.
Br. p. 87.
6.

"That he confederated with the Scots against the Honour of England.

Another,

"That he had caus'd all the Ancient Records of the Scots Homage, and Obedience to the Kings of England to be delivered to them.

This gives a true account why all the Instruments of Homage are not now to be produced, but will be no disproof of such as will appear to have escap'd his Search, or were out of his Power.

Page 254. It appears, not only from the Nature of the thing, that such a Release could signify nothing, but Sir Thomas himself owns, that no Man can alienate the Rights of Majesty: and this the greatest Assertors of the Prerogative of Kings maintain.

Dyer Fol. 44. Particularly to this very point it has been a Divis of Sir John judge'd, that the King cannot release a Tenure *capite*, and it had been resolv'd in a Parliament the question of King James I. "That no Act of Parliament concerning Impositions could be framed by Wit of Man, whereby a

Tenures of the Crown could be extinguish'd.

The Learned Bishop Tonstall, in his Letter cited above, giving an Account of the forms of Homages, which he had sent the then Protector, and taking notice that one of our Kings, had released it, says, "but this could not be effectual, especially

Bish. Bur.
net's Hist.

2. Vol.

Append.

Fol. 108.

" if Homage were done since.

He adds,

" A King renouncing the right of his Crown,
" cannot prejudice his Successors, who have at the
" time of their entry the same whole right that
" their Predecessors had at their first entry: as
" Men Learned in the Civil Law, can by their
" Learning shew. Yet if such release could have
had any effect, Sir T. C. shews E. 3. restored
the Crown of England to its Antient Right.

It may be remembered in what plight matter's stood in relation to the present Question, when *Bruce* usurp'd the Crown of Scotland: that it was without the consent of his Superior Lord, and contrary to the Determination of the Parliament of both Kingdoms, which adjudg'd the Right of the Crown, to belong to *Baliol*, has appeared above.

Let's then hear what Sir Thomas says, in relation to that Possession of the Crown of Scotland, and Homage perform'd after it.

" After the death of King Robert Bruce, Edward Fol. 263.
" *Laliol*, Son of the former *Baliol*, taking his
" advantage from the nonage of King *David*,
" and the factions of the Scots Nobility, enter'd
" Scotland, having obtain'd of *Edward* King of
" England, four thousand English Forces for his
" assistance: and gaining a Victory, he took the
" Crown of the Kingdom, but finding himself
" unfortunate in a Battel afterwards, and the

" *Scots*

" Scots being recruited press'd hard upon him ;
 " he call'd in Edward the Third to his assistance,
 " and perform'd Homage to him, as his Superior
 " Lord for Scotland. Edward upon that Invitation
^{gulf before}
^{be mementos}
^{bis Siffr}
^{agreed to be}
^{given in}
^{Marrage to}
^{David. Vol.}
^{362.}
 hasten'd to Scotland, being nothing mov'd with
 the " Tears of his Sister; and went almost thro'
 all the Kingdom, until his own Affairs call'd
 Johanna, " him home, and he left Edward Baliol with a part
 of his Forces in Scotland to subdue it. But he be-
 ing unsuccessful, and as Polidore says, he and
 all his Men being overcome in one Battle, and
 finding that he was not able to carry on the
 War, he resigned all the Right that he had
 in Scotland, as his Father had done before, and
 Transferred it to Edward.

" From that time Edward look'd on himself a
 King of Scotland ; and reckon'd it among his
 own Countries, as much as he did Wales and
 Ireland. And that he might engage the Af-
 fections of the Scots, he was willing that they
 should enjoy the same Privileges with his own
 Natural English Subjects.

" But that the Reader may be fully convinced
 of the truth of this, and that what I affirm is
 not a Fiction of my own, he will see it clearly
 in the Statutes of the Parliament which was
 held at Westminster in the 11th Year of his
 Reign, the Title of which is, no Cloaths made
 beyond the Sea shall be brought into the Kings Do-
 minions. The prohibition is, that no Foreigner
 or Denizen, shall bring or cause to be brought into
 the Lands within the King's Power ; and the
 Lands are thus specified, England, Ireland,
 Wales, and Scotland, as being all within the
 Power or Jurisdiction of the King. And that
 no English, Irish, or Scotchman, within the Powr
 of

" of the said King shall use any other Cloths but
 " such as are made in *England, Ireland or Scotland.*
 " The same thing is twice or thrice repeated,
 " in these Acts. And therefore seeing he be-
 " lieved *Scotland* to be not only within his own
 " *Ligeance*, but also to be his own, he did not
 " reckon it among Foreign Provinces, nor the
 " Scots, to be others than born within his own
 " jurisdiction.

This is with Sir T. C.'s usual strength, but argues nothing to his purpose, because tho' it was so then the Scots might, and soon did, Forfeit the Privilege of *Demarcis*: and so it has been adjudg'd by several Parliaments, which admitted none of the Scots to the Privilege, who were not Indeni-zen'd by Act of Parliament of *England*, or at least by Letters Patent under the broad Seal of *England.*

Sir T. C. goes on,

" Moreover the *English* always entertain an *Fol. 263*
 " opinion, that the King of *Scotland*, owes *Ho-
 mage* to, and is *Vassal* or *Liege-man* of the
 " King of *England*, for the Kingdom of *Scotland*.
 All their Writers say it, and *Edward I.* and *E.
 VIII.* Claim'd it by publick Instruments under
 " their hands, but I have considered their pre-
 tentions to that, in another Treatise.

" But whether what they assert be true or
 false; yet, perhaps, they had some sort of Reasons
 for their assertion, at the time when that Sta-
 tute was enacted. Thus it is certain that *John
 Balliol* and his Son *Edward*, whom both *E. 1.* and
E. 3. judg'd to the true Heirs of the King-
 dom of *Scotland*, did out of too great fondness
 of Reigning, pay *Homage* to these Kings, even
 for the Kingdom of *Scotsland*. But that deed
 of

" of thales was so thwarting to all the Estates of
" Scotland, and to all Ranks and Degrees, of the
" People in it; that they renounc'd and dis-
" claim'd both the Father and the Son, and
" follow'd Bruce, who was his Competitor; and
" under his conduct repay'd the English, the mis-
" chiefs and destruction they had formerly re-
" ceived.

" But Fortune did so favour E. 3. at the
" time that that Statute was made, that he
" had not only the right of Baliol devolv'd on
" him, but he had also David Bruce, who was
" the true Heir of the Kingdom, and had been
" overcome in Battle, his Prisoner. And there-
" fore being secure of both Parties, he thought
" with himself that Scotland was his own Province,
" when that Statute concerning those born be-
" yond Sea was made, which Trans-marine
" only, he reckoned not to be his own Subjects.

*Sir T. C.
of Homage
P. 422.*

This being so by his own confession, it shew-
how little he considered, when he affirm'd that
the Scots had been in possession of their Liberty
for three hundred Years before he writ, the
English themselves being Witnes.

Where he places it from the time of the
Baliol, but the Parliament of E. 3. whose Au-
thority he receives goes upon the Homage and
Resignation of the 2d Baliol, upon which E. 3.
was possessed of the Power of Scotland in the
year of his Reign: which was 1351. and about
50 years later than Sir Thomas supposes the Scots
to have been free.

That they were not then, Sir T. C. has shew-
to be the judgment of E. 3. and his Parliament
and therefore the English were far from Wit-
nessing, or Agreeing to the Freedom of the

Scots long after the time that Sir T. C. there supposes they had quitted the pretension, tho' it was for his purpose to own in his History of the Succession, when he writ that, that they entertain'd an opinion that the King of Scotland, is a Vassal or Liege-man of the King of England, for the Kingdom of Scotland.

But to have a little more of his admirable way of arguing in his History of the Succession, speaking of the Judgment of E. III. when the Statute in his Reign about Foreigners was made.

" Moreover, says Sir Thomas, had he but said, " or made any Insinuation, that the Scots were " without the Ligeance, or Allegiance of England; " he had by his own Confession, and by the Con- " fession of the Estates of Parliament, quite rui- " ned his Pretensions to Homage for Scotland. " For upon what account could he have claim'd " Homage from a Scotch Man, if once by his own " Statutes he had plac'd them without the Lige- " ance of England?

I might effectually answer this by another Question : How could H. III. and other Kings after him, continue their Claim to Normandy, and other parts in France, and yet seize Lands in England, as Escheats, which would have fallen to Normans or others, had they not been ad- judg'd Aliens after they had withdrawn their Allegiance to the Crown of England ?

'Tis plain, the right of the Crown remain'd, but they had forfeited the Privilege of Denizens.

Further 'tis evident, that several Parliaments after the 25 of E. 3. did look upon the Scots as Aliens ; and yet at the same time asserted the right of Homage for the Kingdom of Scotland.

7 H. 7.
c. 1.

4 Jac. 1.

As I observ'd before, this appears from Acts making Scots Denizens of England, and particularly, the 7th of H. 7. which requires all Scots not made Denizens to depart the Realm, within Fourty Days after Proclamation. Nor were the Scots accounted Denizens, 4 of J. 1. nor after the Act then made here, till a repeal in Scotland, of several Acts made there. But to argue from the Hostilities between the Kingdoms, that *England* gave up a right it asserted by its Arms, is suitable to Sir T. C's. common way of arguing.

And as he seem'd little to think of consequences, he was not aware what he yielded, in confessing that the right of *Edward Baliol* was transferred to our *Edward the Third*.

For when I came to shew the State of the Successions to both Crowns, it will appear that the Right of *Bruce* which he contends for, cannot be allowed without giving up his whole controversy with *Father Parsons*; and however *Baliol's* must be allowed to be the only Title under the Crown of *England*: And consequently, Father and Son did not properly transfer their Rights to our *Edwards*, but effectually surrendered them.

Grafton's
Abr. p.
886. De.
An. 1336.
6 E. 3.
7 A. 3.

Tho' the confession of Sir *Thomas*, may make it sufficiently evident that E. 3. was after the surreptitious release of *Humage*, fully possessed of the ancient Right of Superiority and direct Dominion over *Scotland*, the account of our *Historians* which we may take from *Grafton's* faithful Abridgement of them, makes it, if possible, more evident. "At this time *David le Bruce* the young King of Scots fled into France. After this time the Scots so often Rebelled,

that

"that King Edward made three Voyages into
"the Land within the space of four Years,
"and with great Manhood always vanquish'd
"his Enemies, and made them to Swear to him
"Fealty and Homage.

"In these Battles were Slain, well near, all the
"Nobility in Scotland, with an infinite number
"of the common People.

"The 19th Day of June, Edward Balliol King
"of Scots, came to New-Castle-upon-Tyne, and
"there made his Homage unto King Edward for
"the Kingdom of Scotland, in the presence of
"many of the Nobles of both Realms, and Swo're
"to him Fealty and Fidelity.

Here was a full recognition, while Bruce had abdicated, and he who will appear to have had the true right of proximity, was in quiet possession of the Crown of Scotland. By the 10th of King Edward's Reign, the Scots according to their usual Exercise of Power over their Kings, had remov'd Balliol from the administration, and were more Merciful than ordinary, or else wanted opportunity of making a clear Stage for the abdicated Prince, or any body else, whom the French Faction should set up.

"At this time King Edward enter'd again into
"Scotland, and had there a great Victory, and
"afterwards he plac'd again Edward Balliol King
"of Scots, and received homage of him. And
"then the Scots, with their King, bound themselves
"to King Edward, that whensoever he, or any
"King of England, had or should have War,
"either within his own Land, or with any o-
"ther Prince, they would, of their own proper
"expence and charges, find him 300 Horsemen well
"Armed, and 1000 Footmen well and substan-
"tially

Grafton

p. 89.

An. 1337.

10. E. 3.

"tially furnish'd for the War, which 1300 Men
"they would Wage for a whole Year. And if
"the King of *England*, ended not his War with-
"in the Year, then he to hire and wage the
"said *Scots*, as he did his other Soldiers.

Here the general Obligation arising from
the Tenure, and promis'd by the Homage, for
the Kingdom was reduced to a certainty, by the
content of the People of *Scotland*, as well as the
King.

Yet the *Scots* again Rebelled in the 4th of our
King *Edward*, by the incitement and assistance of
the *French*, yet their King *David* did not return
till the 16th.

In the 20th while King *Edward* was Prosecut-
ing his Wars in *France*, their firm Ally invad-
ed *England*, but the *Queen* her self Assembled
an Army, proud to be so Headed, and took
David Prisoner, with many of his greatest
Lords.

Grafton
p. 92 H.

Anno.
1347.

1352.

In consequence of this, as Sir *Thomas Craig* has
shewn, our King *E. 3.* look'd upon *Scotland*, as
within the Power and Jurisdiction of *England*,
in the 25th of his Reign which was the Year

1352.

And the *Scots*, were by the Parliament of
England, no otherwise held to be Denizens of
England, but as Subjects.

Yet Sir *Thomas* was so wise as to use this Ar-
gument to prove their being *Denizens*, when it
serv'd the question of the Succession, without
considering that it was an undeniable evidence of
the Right of *Homage*, for that *Kingdom*.

CHAP XXX.

The 2d to prove the continuance of the right Cap. 30.
 of the Crown of England. Of the Homage done for the Kingdom of Scotland,
 1 or 2. H. 6. The right to it maintaim'd
 by H. 8. and his Parliament. Sir Thomas
 Craig's ample Confession of the dependency
 till within the Reign of Queen Mary.
 With observations upon the occurrences
 of those times.

FOR 11 Years together David King of Scots,
 was a Prisoner in England, during which
 time Scotland was more immediately under the
 King of England.

And therefore as he was taken in the Year
 1347. the exercise of the Right continued in-
 disputable to the Year 1358.

If David were then set at Liberty without any
 Express profession of Homage, for the Kingdom,
 it could only argue King Edward's greater ge-
 nerosity, if it were not upon the account of the
 large summ, said to have been pay'd for David's
 Ransome.

From that time to the 1st or 2d of H. 6. I do
 not find that the Duty was actually perform'd,
 but then as it had been by the First, upon the
 Scotch Royal Line, Edward Baliol in the Year
 1337. and for several years after that Scotland
 was in our King's Hands, the intermission cannot
 be thought considerable.

Grafton Writing of the 2d of H. 6. says,
 "In this year James King of Scots, was de-
 liver'd

An. 1424. " lver'd who had remain'd Prisoner in *England*,
2 H. 6. " by the space of 17 years, and he did *Homage*,
" for the *Realm of Scotland*.

Hall's
Chron.

The form of it to be seen in *Hall*, is this,

" I James King of Scots, shall be True and
" Faithful unto the Lord Henry by the Grace of
" God King of England, and France, and Superior
" Lord of the Kingdom of Scotland, and unto
" you I make my Fidelity for the same King-
" dom of Scotland, which I hold and claim to
" hold of you, and I shall bear you my Faith and
" Fidelity of Life and Limb, and Worldly
" Honour against all Men, and Faithfully I ac-
" knowledge, and shall do the Service due for
" the Kingdom of Scotland.

Our King was not then three Years Old, and his Uncle the brave Duke of Bedford, was Gloriously carrying on the War against France, while his other Uncle Humphrey Duke of Gloucester, executed the Trust repos'd in him by the Parliament of *England*, in requiring this recognition from the King of *Scots*.

This being but the due *Homage*, which had been recogniz'd from of Old, it can be no objection that the King of *Scots* was then a Prisoner, any more than their Kings being always in the Power of the King of *England*, while he did *Homage*, could set aside all instances of performances of the Duty.

If the *Homage* was not binding, neither had the *Scots* any Lawfull King, but the Fee remain'd consolidated to the Crown of *England*.

Besides to fix this upon the Nation, without possibility of evading it, our Records of the time shew, that by a Solemn agreement made in a *Parliament* at *Tork*, between the representa-

Not. claus.
2 H. 6.

tives

tives of both Kingdoms, Commissioners were appointed by the Protector of the Kingdom of Scotland, under the great Seal of that Kingdom, to treat with our Commissioners on the Terms for delivering their King : and we had not only several Hostages, but the obligations of Edinburgh and other Towns, for the performance of what was to be done by the Scots ; a Record was, by Commissioners on both sides, agreed to be made of the Oath taken by the King of Scots ; and he afterwards, at full Liberty, ratified the whole Agreement, under the Broad Seal of Scotland.

If this had not been with the full consent of his Kingdom ; as Sir Thomas Craig holds that he ought to have been disown'd for thus subjecting his People, we should have heard of some tumults upon this Submission : but the People took their King very contentedly upon these Terms, and that tho' he was not the first upon the Royal Line.

Thus it appears that the Scotch Nation, as well as the English, then agreed, that Homage was due to the Crown of England, for the Kingdom of Scotland.

This H. 8. asserted to the full in a Declaration of War, 33 of his Reign, wherin he set forth many Evidences from Histories, Records, and Instruments of Homages. But to silence all objections from private Opinions, or Resolutions of Judges, as if the Homage of the Kings of Scotland, and subjection of them and their People had been extinguisht before that time ; an Act of Parliament in the 34th of his Reign, for the remission of a Loan which had been granted, reciting the Ingratitude of the French King, after many benefits receiv'd of King Henry, and his An. 1541.

his bringing the Turk into Christendom, adds,

" And whereas his Majesty is Fully and Lawfully Intitled unto the Crown and Realm of Scotland, to whose Highness, as to their Natural Liege Lord, all the Inhabitants of the same ought to bear due obedience and be Subjects; yet nevertheless the same French King, ceaseth not daily to procure, move and stir the same Scots, contrary to the Duty of their Allegiance, Faith, and Promises confirm'd with great Oaths, not only to Rebel against his Majesty, but also to make Divers and Sundry, Incursions, Invasions, Spoils, Burnings, Murders, Wastings, Depopulations, in this his Realm of England, and to make open War against the King's most excellent Majesty, this Realm of England, and other his Grace's Dominions. Therefore the King determin'd with the Power of his Realm, to reduce and bring his said Enemies to reasonable conditions.

Thus the right of the Crown of England, to the Allegiance of the People of Scotland, is fully Declar'd, and asserted by Act of Parliament.

Sir T. C. This being in the Year 1544. was not 150. years since, H. 8. and his Parliament were not in the least aware of the consequence which Sir Thomas Craig thought unavoidable, that in calling the Scots Enemies, by his own confession, and the confession of his Estates of Parliament, he quite ruin'd his pretensions to Homage for Scotland.

But 'tis manifest they were not accounted Denizens of England, because they forfeited the Privilege they had been Entitl'd to, if they had kept to their Duty.

It may well be thought that H. 8. growing in years, and his Son and Heir to this Imperial Crown being a *Minor*, while the Heireſ of the Crown of *Scotland* was yet younger; that wise King *Henry* and his *Council*, would endeavour to make use of that favourable opportunity, of taking from the *French* *Faction*, all pretences of disturbing the *Peace* of this *Island*; by an honourable Annexation, of the Feudal Crown of *Scotland*, to the Imperial Crown of *England*, upon a Match between the Heir of *England* and the Heireſ of *Scotland*: this one would think the *Scots* should have desired above all things, for the taking away what they held the reproach of their Nation; that their King should be an Homager for his Crown.

On the other side, as not only the hopes of *France*, but of all the Partisans of the See of *Rome*, were likely to be dash'd by such a conjunction, and the Children of this World are wisest in their generation, it will be no wonder if all good Men were disappointed of the glorious Days which they then promis'd themselves.

How and upon what Ground, those hopes were defeated, who were to blame, the English or the *Scots*, and who were the greatest sufferers upon that occasion, I desire Sir *Thomas Craig's* Admirers, to take from no less an Authority than that which themselves cry up.

"After, says he, King *James 2. of Scotland* Sir T. C. was dead, there remain'd his only Daughter of the Succession Fol. 947. and Heireſ of the Kingdom: who was born but 6. Days before her Fathers Death. H. 8. had a Son *Edward* who was a most hopeful Prince, and at that time in the 4th year of his Age. *Henry* being a wise King; and desirous

" desirous above all things to promote the Welfare and Interest of his own Kingdom; lays hold of an occasion that offer'd it self, and having many Scots Noblemen, who had been taken in War Prisoners at that time, he set them all at Liberty, and having bestow'd Rich Gifts and Presents upon them, he order'd them to return to Scotland, taking their promise only for this, that they should use their best endeavours to promote that Union and Conjunction of the two Kingdoms, which had been so often and so long wish'd for by both, now that a fair opportunity offer'd it self. They after their return to their Country, did faithfully perform their Promise. For they believing it to be for the Interest of the far greater party of both Nations, made it their whole Business to have that Marriage between Prince Edward and Queen Mary agreed upon, and the Regent was at that time earnest enough for it, and so without farther delay upon the arrival of the English Embassadors, that Affair was concluded and the Treaty Ratified and Confirmed, by the Great Seals of both Kingdoms.

FOL 348. " But the Enemy of Peace and Union hindred the Affair then begun. There was at that time in the Kingdom of Scotland, one Cardinal Beaton, a fierce Prelate, who was most Zealous and Faithful to the Interest of the Church of Rome. This Man having assembled the Clergy throughout the whole Kingdom, told them, that he and the whole Ecclesiastical Order would be destroy'd, unless a stop was put to that Match. Henry had now openly made defection from the Pope, seiz'd the Church Lands, and invaded all the Donations which had

had been given to Churches, his Son would do the like in Scotland ; and introduce Luther's Heretical Opinions. The Church of Scotland would be ruin'd unless the Clergy, every one of them as they could, oppose that Marriage, that it might never take effect, by importuning the Nobility according to every Mans Occasion, Interest or Friendship with them : and that the Monks and Friars should by their Sermons stir up the People, to get the Treaty of Marriage broken. Neither did they desist, till they obtain'd what they aim'd at, having enticed the Regent, and brought him over to their Party, by hopes of great Preferment in France : even as the Title of Dukedom of Chastelleraut, was at that time conferr'd upon him. This gave occasion to many Calamities, wherewith we were afterwards afflicted, our best Towns were burnt, the Scots Army was overcome after a most bloody Fight, while before the Engagement between the Armies, the Protector of England by Letters full of Humanity, desir'd only of our Country Men that the whole Affair might be delay'd, until our Young Queen should come to Marriageable-age, and that in the mean time she should not be dispos'd of in Marriage to any other, but left to chuse a Husband for her self with the advice of the Estates. But the Destinies push'd forward our Miseries, and the Letters being receiv'd by the Abbot of Dunferling were suppress'd ; and a Battle was most unfortunately fought at Pinkie. But after this Battle our Country Men being encouraged by some Assistance, and promises of the King of France, who believ'd that the Union of both Kingdoms would be very prejudicial to him, they remitted nothing

" thing of their former Riffness, the Prelates,
" like so many Furies stirring them up.

" The Estates of England, tho' Victors wrote
" most courteous Letters, by which they did
" with much concern sollicite us to an Agree-
" ment, and to our common Peace and Quiet,
" laying before us the Difficulties and Mischief
" which might accompany a War, should it be
" continued; and of the Advantages which we
" might reap by entring into Friendship with
" them.

" First, say they, such as shall read our His-
" tories will find, that there have been many most
" destructive Wars between the two Nations,
" and they must be amaz'd, that the People of
" the same Country and Language, should have
" such cruel and deadly Quarrels among them-
" selves; and, say they, nothing is in much to be
" desir'd, as that by some means the People of the
" whole Island may grow into one civil Body, and
" be under one Government. Neither can any
" better Expedient be found for obtaining that
" end than Marriage is. And when God Al-
" mighty has pointed out to us, and afforded us
" that Means, we, meaning the Scots, by our own
" doings oppose it, while from that Marriage
" there might be a Bond of perpetual and immor-
" tal Friendship between both Nations: and that
" we rejected that Occasion that had been so
" much wish'd for, and yet did offer it self before
" for these 800 Years past.

" They, tho' Victorious, and almost Conquerors,
" courted the Scots into a Peace, and while they
" posses'd a great part of Scotland, were ready
" to share their own England with them. Nay,
" they offer'd that, laying aside the names both
" of

" of English and Scots, thereby to take away all
 " Names of Distinction and Hatred ; both Na-
 " tions should be call'd Britain, as being a de-
 " signation common to both Kingdoms , they
 " promis'd us a share of all their own Advanta-
 " ges, and at last they cry out, *O Miserable and*
 " *Wretched Obstinacy ! We are on all quarters en-*
 " *clos'd with the Sea, as with impregnable Walls*
 " *and Bulwarks ; so that were we united among*
 " *our selves in a firm Friendship, our Happiness*
 " *should be compleated, and we should make a*
 " *most Flourishing Monarchy.*

" These things, and much more to this pur-
 " pose are contain'd in those Letters, by which
 " the English themselves bear Witness, that the
 " Union of both Kingdoms was not less heartily
 " wish'd by themselves, than by us.

" And indeed in all that War, which from
 " that time that it lasted was call'd the Nine
 " Years War ; the English had the advantage of
 " us, both as to the Success of their Arms, and their
 " Cause, our aversion to the true Religion, which
 " at that time we call'd Heresy, and the Power of
 " the Ecclesiastical State, which then made a great
 " part of, and had great Interest in the King-
 " dom were highly prejudicial to us ; or rather,
 " it may be ascrib'd to this, that we should not
 " be united, unless our Blessed Lord Jesus was
 " the Reconciler, and the Light of his Gospel,
 " directing our way ; which after it shined upon
 " us also, we not only rejected the Power of
 " France, with that Friendship which had cost us so
 " much Blood ; but we most religiously maintain'd
 " a Friendship with the English, and made use of
 " Auxiliary Forces from them.

" The

" The Humanity of the English did indeed over-
 " come all causes of Hatred, which our Country-
 " men did afterwards witness by their Deeds.
 " For while our Queen, who was Dowager of
 " France, was to assist the King of France, he be-
 " ing at that time overcharg'd with War, both
 " by the English, and Spaniards. She caus'd War
 " to be proclaim'd against England, which the
 " Scots Nobility took very ill; and when they
 " met in Arms in Obedience to the Proclamation,
 " the Queen took care to have the Artillery sent
 " over Tweed, before the Affair could be throughly
 " consider'd, and all things were in readiness for
 " besieging the Castle of Wark. But the Nobility
 " being extreamly displeas'd, that this was done
 " without the publick Advice of the Nation, and
 " that they did not reckon it a necessary War,
 " they desisted from the Siege, and disbanded
 " the Army. For they said, that they might
 " employ their time better, than to make War
 " without a Just Cause upon their Neighbour,
 " who had in no wise provok'd them to it, by doing
 " them any Injuries.

M. 1557. " Such was the grateful Sense that they retain'd
 " of former good Offices. These things were
 " done in September, in the Year 1557. since
 " which time, even our greatest Enemies them-
 " selves acknowledge, that the Friendship and
 " Alliance with England, has been truly, and
 " sincerely kept by us.

It would have been pity to have left out any
 part of so ample a Confession, of the Humanity
 of the English, and Obstinacy of the Scots, out
 of their then Love to France, and Popery.

I must observe upon this, and the History of
 the Times.

1st. That

Grafton
Do An
1557

1st. that in the Year 1548. while the Council
of England was in some expectation to get the
young Queen of Scots for their King, the French
caus'd her to be privily convey'd away into
France, and there she was Married to the Da-
phin.

2. That the Scots did not disband the Army
rais'd against England, upon so Noble a Motive as
induced the States of England to offer to quit all
the Advantages their Arms had given : For, 'tis
evident, that this was chiefly, that they might
the more effectually carry on the Reformation ;
but the Scots disbanded their Army in the 4th of
the Reign of Queen Mary, as great a Bigot for
Rome, as the Scotch Cardinal Beaton.

3. As that great Man the Duke of Somerset,
Ancestor of the present deserv'd Successor in that
Dukedom, had the chief Administration of Af-
fairs at that time ; and as appears by Bishop
Tonball's Letter to him, was fully Appriz'd of
the Superiority and direct Dominion of the
Crown of England over the Kingdom of Scot-
land ; his not taking the Advantage of repeated
Victories, to set aside the Possession of the Queen
of Scots, after the Marriage so generously offer'd,
had been rejected, was a demonstrative Evidence
of that excellent Persons Sincerity, and preferring
the carrying on the Reformation, and the In-
terest of Religion, to all other Considerations.

As the People of Scotland chose Popery and the
side of France, they chose to keep up the contro-
versy about the dependency of that Kingdom, which
might have been buried by a Match, so much
for the good of both Kingdoms, that nothing
but a strong attachment to a Foreign Interest,
could have prevented it.

5. As they kept up the controversy which was begun in the Reign of H. 8. who in his Declaration of War asserted his Superiority and direct Dominion over *Scotland*, the event of the nine Years War, being not only on the side of King *Henry*, but afterwards of his Son *Edward* the 6th as Sir *Thomas Craig* himself has fully own'd, the Crown of *England* was at the end of that War in full Possession of its Right.

6. As the Declaration of War, by *Mary Queen of Scots*, was contrary to her Duty who was an *Homager* to the Crown of *England*; the Nobility of *Scotland* by disbanding the Army then rais'd, disavow'd that Renunciation of Homage, and therein submitted to the Right of the Crown of *England*, maintain'd by the event of the nine years War.

7. Tho' the Nobility did thus acquies, yet till some King or Queen of *Scotland* was restored by a new Investiture after that Declaration of War, or the coming to the Crown of *England* purged that disability to have the Crown of *Scotland*, it was not Rightfully held, by any Person.

(317)

CHAP. XXXI.

The 3d proving the continuance of the Superiority in the Reigns of J. I. C. I. Of the condition of the Scots in the times of Usurpation and the consequence of it.

AS Sir Thomas Craig agrees from the Year ^{Vid. 1557.} till the time of his Writing about ^{Pref.} the Succession, but a little while before which, King James came to the Crown of England; there was a firm Friendship between England and Scotland, this was far from diminishing the Right of Homage, so often renewed and to the last asserted with success.

During the Reign's of J. I. and C. I. the Homage continued in suspence, but the Right of the Crown untouched. Soon after, the Affairs of England and Scotland had a new Face; and according to a Prophecy of the Scotch Merlin cited by Archbishop Usher, and seeming to point at events from the uniting the whole Island under J. I. ^{Vid. Antig. Bri.}

*Ut Merlinus ait, post Reges victoriosas,
Regis more carens regia sceptra geret.*

As Merlin says, Victorious Kings being gone,
One without Royal Ensigns mounts the Throne.

This may be thought to point at the Government of Oliver Cromwel, who had been appointed General against the Scots; by the Usurpers of the Power of England.

He, and General Monk acting in his absence, having subdued the Force of Scotland, and settled Garrisons where they found it requisite, to keep them under the Parliament of England, as the part who acted call'd themselves; to the end the People of Scotland, should be united with the

Vid. the
Hist. of
the Union
ed. An.
1660. p.
109.

p. 110.

12. Car.
2. c. 11.
Par. 23.

' People of *England*, into one Common-wealth,
' and under one Government; sent Commissioners
' into *Scotland*, to invite the People of that
' Nation unto such an happy Union, who pro-
' ceeded so far therein that the Shires and Bo-
' roughs of *Scotland*, by their Deputies appearing
' at *Dalkeith*, and again at *Edinburgh*, did accept
' of the Union, and assent thereunto: which was
' seconded by *Cromwel*, then Protector of the
' Common-wealth of *England*; who by the ad-
' vice of his Council, ordain'd April 3rd 1654.
' That all the Dominions of *Scotland*, of the Isles
' and Territories thereunto belonging, were and
' should be incorporated into, Constituted, and
' Confirmed, one Common-wealth; thirty Per-
' sons should, be called from, and serve for Scot-
' land. Which ordinance was confirmed by the
' Parliament in the year 1657. so many Knights
' and Burgesses as before was expressed, who were
' call'd and summon'd according to the said Or-
' dinance, were admitted to sit in the said Par-
' liament, and did Vote and Joyn with the Eng-
' lish; in the making and enacting Laws.

' Which Laws, says my Author, do bind
' and oblige the Commons of *Scotland*, as well
' as the Commons of *England*; because the
' Knights and Burgesses, being chosen by the af-
' sent of the Commons of either Country, do re-
' present the Estates of the several and distinct
' Commons of either Country.

I shall not take upon me with that Author, to
maintain those Laws still to be obligatory; but I
may observe.

1. That by the Act of Indemnity 12 Car. 2.
whatever ensued upon the Hostilities between
the then late King, and the Lords and Commons
then

then in Parliament Assembled, whether trenching upon the Laws and Liberties of this Nation; or upon the Honour of his said Majesty, or Authority of the Parliament; or to the prejudice of any particular Person, was not to be called in question.

2. An other Act for confirmation of judicial proceedings, provides, among other things, that 12. C. 12. Par. 1. proceedings there specified in, upon pretended Acts, or Ordinances, made by both or either House of Parliament, shall be as if they had been Good, True and Effectual, and afterwards enacts, that the Names and Stiles used to them, are most Rebellious, Wicked, Traiterous, and Abominable Usurpations; but the Acts and Ordinances of those times in general, are no where that occurs to me, set aside or declared Void: not but that some in particular are.

3. To the acquisitions made by them who were possessed of the Power of *England*, and the submission of the *Scots*, then possibly some may apply that of *Grotius*.

*Nec; enim resert quo-
modo gubernetur an Re-
gis, an plurium, an
multitudinis imperio. I-
dem enim est populus Ro-
manus sub Regibus, Con-
sulibus, & Imperatori-
bus.*

' For neither Matters *Grotius*
' it how it is govern- *de jure*
' ed, whether by the *belli &*
' Authority of a King, *pacis lib.*
' or many, or the mul-
' titude. For 'tis the
' same People of *Rome*,
' under Kings, Consuls,
' and Emperors.

'Tis certain we kept *Dunkirk* till King *Charles* or some Body else sold it, as we still do *Jamaica*; tho' both were gain'd to the Crown of *England* in the times of *Usurpation*.

However, as the *Superiority over Scotland* is no new Acquisition, the usurped Powers left the Crown of the Kingdom of *England*, in full Possession of its ancient Right. What ever may have been the effect of King *Charles's* not insisting upon the union, the Right of the Crown was never parted with.

4. Who ever considers the purport of the Dedication of the 2d Volume of the *Lord Clarendon's History*, may see, that as far as the judgment of the Person or Persons, who writ the Dedication can conclude their Party, they cannot deny but King *Charles*, by taking the Covenant in *Scotland*, effectually Abdicated or Renounced, being King of *England*; and consequently whatever Right over the *Scots* was acquired during that Abdication, must needs have been effectual to all intents and purposes.

To illustrate which 'tis observable, that in the Sense of that Dedication, the Interest of the Church of *England* is so interwoven with the constitution of the Government, that as not to protect the Church is a failure of the regal Duty; for a Prince to lay himself under any Obligation to destroy it, is the highest Violation of the Constitution. Upon this very account *Archbishop Sandcroft* and others, the most Zealous Advocates of the Right of Monarchy, joyn'd in inviting his late Majesty, when but Prince of *Orange*, to take upon him the Government of *England*: but what ever obligation King *James* lay under, from his Religion, to bring in *Papery*, and what ever Evidences he had given of his intentions to ruine the establish'd Church; they were but small in comparison with what King *Charles* engaged to, before

before the Scots would admit him to Reign over them.

The Scotch Parliament convened at Edinburgh Vid Exst. soon after the Death of King Charles the First, History of by virtue of an Act of the Committee of Estates the several who had Power and Authority from the last Charges of Parliament, for convening the Parliament, ac- Gouver-
knowledge, that Charles Prince of Scotland and ment, from the horrid Wales, had just Right, Title and Succession to King C. I. the Crown of these Kingdoms; Declared that to the happy he was King by the Lawful Right of undoubt- Restaura-
ed Succession and Descent, which all the Sub-^{1660. p.}
jects of that Kingdom were bound to obey, ac-^{7. 8.}
cording to the National Covenant, and the Solemn League and Covenant betwixt the Kingdoms. And because his Majesty is bound by the Law of God, and the Fundamental Law of that Kingdom, to rule in Righteousness and Equity, to the honour of God, the good of Religion, and the Wealth of his People; it is thereby declared, that before he be admitted to the exercise of his Royal Power, he shall give satisfaction to that Kingdom, in those things that concern the Security of Religion, the Unity betwixt the Kingdoms, and the good and Peace of that Kingdom, according to the National Covenant, and the Solemn League and Covenant.

They send Sir Edward Douglas to acquaint the King with this, and in the mean while appoint a Solemn Fast and Supplications that God would prosper their addresses to the King, for the good of the King and State. Their first instruction to Commissioners to the King, sent after Sir Edward Douglas, was, that his Majesty take the Covenant.

*Ibid. p.
10.*

p. 27.

P. 39.

That would not then go down, nor would the Commissioners or States of Scotland upon any terms admit the King, but upon that and other conditions.

P. 40.

However, thinking to force his way, he granted a Commission to Montrose, to levy what Forces he could beyond Sea, and with them to joyn the Lord Seaforth, Major Straughan and others, who had got to a Head for the King without the Kirk, in the North of Scotland: but they were Routed before he came by Lesley, and himself not long after his arrival defeated by a Party of the Kirk's, taken Prisoner, and Hanged at Edinburgh.

And this tho' he Acted by Commission of him, whom they had before declared to be their King, by the Right of Succession, and Descent.

P. 49.

The King finding they would not, however, admit him to the Possession, without complying with their Terms; Before he was Crown'd took the Solemn League and Covenant, and subscrib'd a Declaration of the Kirk's own framing, wherein he declared, * That he renounced the Sins of his Fathers House and of his own, (the Idolatry of his Mother, by a constant adhering to the cause of God, according to the Covenant) in the firm Establishment of Church Government, as it is laid down in the Directory of publick Worship, Confession of Faith, and Catechism.

A Solemn League
and Coven-
ant for Re-
formation
and De-
fence of Re-
ligion the

The second Article of that Solemn League and Covenant which King Charles took, was thus.

* That we shall without respect of Persons, endeavour the extirpation of Popery, Prelacy, that is Church Government by Archbishops, Bishops, their Chancellors and Commissaries, Honour and Happiness of the King, and the Peace and Safety of the three Kingdoms, England, Scotland, and Ireland.

* Deans.

‘ Deans, Deacons, and Chapters, Archdeacons, ‘ and all other Ecclesiastical Officers depending ‘ on the Hierarchy, Superstition, &c. That the ‘ Lord may be one, and his Name one, in the ‘ three Kingdoms.

Before the Scots had Crowned their Covenanting King, they who Acted as the Parliament of England, were before hand with them, and invaded Scotland; after which the King being Crowned and Marching with such Force as he could into England; by the celerity of Cromwel, coming up unexpectedly to that Fight at Worcester, so fatal to the Royal cause, King Charles was obliged to retire beyond Sea; which gave the Power of England opportunity to compleat the reduction of Scotland, which being while King Charles had abjured the Church of England, whether thereby the reduction of Scotland was the more, or less absolute, Men may judge according to their different Sentiments.

But take it either way, and tho' nothing of this kind had hapned in the times of Usurpation, it must be agreed, that the Claim and Exercise of the superiority of the Crown of England over the Kingdom of Scotland, is far from being antiquated.

C H A P. XXXII.

Cap. 32. The 4th proving the continuance of the su-
periority and direct Dominion of the Crown
of England, over the Kingdom of Scot-
land, by refuting Sir T. C's Brief and
Summary conclusion, with his new and
strong Arguments against the Homage,
which he calls Fictitious.

p. 415.

SIR T. C. to put an end to the dispute, con-
cludes it to be 'certain, that in the time of
'the British Kings there was no such thing as
'Homage in the World, nay nor during the
'Reign of the English Saxons, until Athelstan's
'time.

The contrary of which I believe no Man can
reasonably doubt of, who will attend to what
I have produced: and yet they cannot but per-
ceive, that if there had been no such thing, it
would be no Argument against the superiority
and direct Dominion, of the British, since Eng-
lish Crown, over all those parts which now are
call'd Scotland.

He complains of the English Historians, as if
they would obtrude a *commentitious* Homage upon
the Scots, by a direct Paralogism, a *ditto secun-*
dum quid ad dictum simpliciter, from a thing said
in a certain respect to a thing said simply. For
'whereas the Homage as he says, was due and
'perform'd, for the Countries given in Fee, yet
'they have left it upon record in general that
'this Homage was perform'd.

But I suppose 'tis more Evident that the Para-
logism

logism lies in his own Fictions, as if the Scots held p. 416, any thing of the Crown of England reputed part of it, besides the Kingdom of Scotland and Lo-deny, before their Malcolm's Temporary Enjoyment of Cumberland, and that their David was Earl of Huntington: and therefore before such times the doing Homage was in its nature simply, without special regard to Lands which they had not, and if they pretended to any of them, their claim was not allowed; and yet they did Homage.

Again, he supposes the Historians invert the Paralogism, and contrary to the mind of their Predecessors, have proceeded from a thing said *simply to what was said in a particular respect*: and that they finding it simply mention'd in former Writers, that the Scots had perform'd Homage, they applied it, that Homage had been perform'd for the Kingdom.

What I have produced is from Authorities, some within the very times, and others so near it, that they could not be deceiv'd; they not from Writers alone, but numbers of Charters, evincing the Superiority and direct Dominion of the Crown of England, over the Kingdom of Scotland; and consequently, that when ever there was no particular Limitation; (which, when it was allowed, was either with a *salvo jure* to the Crown of England, or so as it could not be bound) as it was done simply Homage; for the Kingdom was necessary implied, and could not be separated from the Act, it being the Liege-Homage of the King of Scots, wherein he recogniz'd the Superiority of the Crown of England over him and his Kingdom; and this, if not always, done with the express consent of his States, a pursuance of what they had over and over often bound themselves to.

But

P. 416.

But, says Sir Thomas, that I may come to the Kings of the Norman Race, ' who of all the Kernel of Cloyster'd Monks, did ever say, that Homage was perform'd for the Kingdom of Scotland, either to William the Father and Son, or to Henry the 1st. or 2^d, before William King of Scots.

No Man surely now will deny, but Homage was perform'd to the two Williams, for the Kingdom of Scotland.

If no Homage were done to H. 1. his desire of the Scotch Match, might be thought to have suspended the exactation of his Right; and if H. 1. in the beginning of his Reign took Homage, allowing the King of Scots a Salvo for his Dignities, these things being, as appears above, highly improbable, as contrary to the Course of History, and the Series of Transactions between the two Kingdoms, ought not to be believ'd without a great an Unanimity in Historians, as there is in the Story of *Bess Mure*; but that there is not such an Agreement, as to the Homage perform'd either to H. 1. and H. 2. appears that in, the *Chronicle of Mailros*, which was more exact in relation to what pass'd between the English and Scotch, than any History quoted for the *Salvoes*, says,

Anno.
1157.

Rex Malcolmus Scotorum veniens ad Regem Angliae Henricum, apud Cestriam devenit homo suus, eo modo quo Aulus suus fuerat homo veteris Regis Henrici.

Malcolm King of the Scots coming to Henry King of England at Chester, became his Man, in the same manner as his Grandfather was the Man of King Henry the Elder.

The

The Bishop of Carlisle, who throughout gives greater Credit to the Scotch Antiquities, than to the English, says of this,

" Which is the first time any such Salvo is recorded.

His Lordship, it seems, looks on the Scotch Copy of this Register, as most Authentick, taking that for the Record, in a matter which he owns is not taken notice of in the Oxford Edition, but only in the Manuscript Copy which they have in Scotland.

I will appeal to his Lordship, which is most likely to be true, that either the Manuscript Printed by Authority of the University of Oxford, left out a Salvo, or that such an one has been interpolated in Scotland; and which is rather to be thought the Original Register; especially since his Lordship says, the Monastery it self seems then to have been in English Hands.

Sir G. M. who had much ado in this matter to keep up the Complement between him and that University, says, the Differences of that Printed at Oxford, from theirs, shall be Printed. But he was as prudent in not causing those Particulars to be Printed, as in not making good his Promise to give at large the Second Act, settling the Succession upon Elizabeth Mure's Children.

And the Bishop of Carlisle, who had seen several of the Manuscript Copies in Scotland, and had one of them when he writ, was more kind to them than to shew wherein they differ from the Oxford Edition.

If, notwithstanding the Authority of the true Register of Mailros, it were to be believ'd, that H. 1. and H. 2. allowed Salvoes for the Scotch King's Dignities; the Submission of that King

Scotch

Hist. L. 6.

P. 80.

The Anti-

quity of the

Royal Line

of Scot-

land

further

clear'd and

defended

P. 96.

Scotch

Hist. L.

P. 81.

and

and Kingdom afterwards in H. 2d's Parliament at York, were full Recognitions of the Ancient Right of the Crown of England.

Sir T. C.
p. 417.

' Sir Thomas Craig says, That the true form of
' the Homage done by the Kings of Scotland, was
' with a Salvo for their own Dignities and
' Rights ; and that sometimes it was expressly ad-
' ded. For their Lands and Dominions in England,
' not only by Malcolm and William, but by every
' one of their Predecessors, or Ancestors, is
' plainly testified by King Richard ; and that Scot-
' land was always independant both in his time,
' and that of his Predecessors.

Whereas it has appear'd

p. 301.

1. That if R. 1. had testified any such thing in a Charter, witnessed by no one English Peer, but his Brother John, it could have been of no manner of Signification.

2. He forgets his own Quotation of the Words of that Charter of R. 1. quitting William King of Scots from all Agreements, and Covenants, which his Father had extorted from Malcolm, by new Charters, and his Imprisonment ;

' So as he performt intirely and fully to us,
' whatever Malcolm King of Scots his Brother
' did, or of Right was oblig'd to do to our Pre-
decessors.

It adds,

' And we shall do unto him whatever our Pre-
decessors did, or of Right were obliged to do
to the said Malcolm, viz. as to his safe Conduct
coming to, returning from, or staying in our
Court.

Is this which leaves what was to be perform'd by the King of Scots to the ancient Right, and makes

makes it Evident that he was to attend at the King's Court, to perform the Ancient Service, any thing like testifying, that the King of Scotland was always independent ? For want of Arguments, Sir T. C. would have Declarations of War by Alexander the 2d and 3d, contrary to the Duty of their Homage, to prevent the conveying to Posterity all Suspicion of their Servitude ; and would have that Epistle of Pope Boniface, p. 418.

which has been refuted above, to be a divine Record of their Freedom, and to set aside the Authentick Record of the Homage done simply without any particular Lands & E. i. with his Salvo for having it express'd for the Kingdom, when he should think fit, an Allowance of it only for beneficiary Counties in England.

He says at the Inauguration of their Kings, the Consent of the King of England was never required ; nor was the renewal of the Investiture ever demanded from any Successor to the Crown of England : and says, that Baliol was the only Man who ever had Investiture from the King of England, and that he purchas'd by Bribery : not being aware that his Manuscript of the Succession would be Printed, where he owns, that Baliol's Son Fealty, did the same, as has appear'd above; however if it had never been renewed, seizin of the Homage for the Kingdom, was a seizin of all the rights incident to it, and it has been adjudg'd, * that " doing of Homage is seizin of all Services, both Inferior, and Superior, because in doing Homage, he takes upon him to do all Services.

He would make a mighty Inference from the Wars, Peaces, and Truces, between the Kings of England and Scotland : as if he had never read of our Barons Wars, in which there had often been

p. 417.

vii's c. 4,

Rep. 3.b.i.

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the like between the Kings John and Henry 3d, and their Subjects of England.

p. 419.

" As for your Court of Parliaments, says Sir T. C. we did not only never acknowledge their Superiority over us, but were never summon'd, to them. Which shews either gross Ignorance, or something worse.

So that from the true state of those Facts, from which he concludes the impartial Reader will be able to judge, whether the King of England could claim any Right of Superiority over Scotland; If there were no evidence of other matters relating thereto, the Affirmative may appear to any Man, who is not hardned against all Conviction.

He adds the consideration of right of Wardship, which, as I have shew'd, is not an inseparable incident to Homage; but if it were, the Right was sufficiently recogniz'd, in paying the Homage, and so 'tis of Marriage.

p. 421.

Whence, but from his own Book of Feuds, could he infer, that the direct Dominion of a King over any Country, may be lost by 30 Years Possession of any who hold of the King? and with what regard to Truth does he affirm, that they have been in Possession of their Liberty for 300 Years since Baliol's time, meaning the first Baliol, tho' as has appear'd, E. r. was in Possession for some Years after Baliol's Resignation, besides the mean continuances. He would frame a mighty Argument from their having Parliaments, without any consent of the English demanded, in calling, or holding them: and might as well argue

p. 422.

that the English Plantations are independent, where such Assemblies are call'd and held from time

time to time, without taking any direction from hence.

As to the Justice which he pretends their Kings have Administred, I have shewn by what Law it was, and that the Chief Justice of England has been their Chief Justice, by the consent of a Parliament of both Nations; that is in truth of an English Parliament, where their Representatives have been admitted to Vote.

" But lastly, there is, says he, that adamantine or inviolable League betwixt the French and the Scots, which could never be infring'd by any revolution of time, and wherein both Kings do expressly promise upon Oath, to assist one another against their common Enemy, the English, with offensive and defensive Arms; and that this League was made 200 Years before the Norman Conquest, Hollingshead himself bears us witness: upon which he asks " Where was it ever heard of, that another King's Liege-Man or Vassal enter'd into a League with his Lord's Enemy?

Admit it true, that such a League were so ancient, could Sir T. C. think to impose this as an evidence of the sincerity of his Country-men? and if the Homage done, and Fealty sworn by the Kings of Scotland, were only for Lands in England, which Sir T. C. contends for, that had obliged their Kings for many Successions before, and after the reputed Conquest, and they had expressly bound themselves, to be the King of England's Men, for Life and Limb, and Worldly Honour, and to them to be True and Faithful for what they held, against all Men without Exception.

And

And besides, that this alone required the not entering into any League, contrary to this Obligation, the Homage and Fealty having been for the whole Kingdom of Scotland, makes it past all possibility of question ; and according to the import of the common Obligation, in Henry the Third's time, the King of Scots expressly bound himself and his Heirs to this, by Charter : and the whole Scotch Kingdom have more than once solemnly renounced all Confederation with France.

And the more inviolable the League with France is suppos'd to be, the more ought all honest Men, both in England and Scotland, to enforce the Duty of Homage for the Crown of Scotland ; and that Subjection of which it has ever been a Recognition.

But as no Man can pretend to weaken that Demonstration, with which our judicious Historiographer has set aside the Fictitious League between Charlemagne of France, and Athanus suppos'd to be King of the Scots here, while as has appear'd above, the Power in those Parts was British ; 'tis very remarkable, that the first Act in the Reign of Robert the Second, to settle the Crown upon John the Son of Elizabeth Mure, was in the very Year when the Famous Adamantine League so often renew'd, call'd the Old League, the Famous Alliance, was first enter'd into.

This being so many Years after Homage and Allegiance for the Kingdom of Scotland had been done, and sworn by those Princes and their People ; it manifests that League to be founded in something, to which I forbear to give its proper Appellation,

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Indeed, *Bailot* had set an unfortunate President for his Successors, not only in the Event above, but the Judgment of his best Friends, the Pope and the King of France; That he being a Vassal to the King of England, could make no Alliance; and therefore could not be included in a Treaty of Peace, in the Word *Allies* of France.

2d Letter
P. 12.

C H A P. XXXIII.

The Fifth, Proving the Continuance of the Superiority and direct Dominion of the Crown of England over the Kingdom of Scotland. According to the known Rule of Law.

I Cannot but here observe how miserably such Pretender's to the knowledge of Antiquities as Sir Thomas Craig, impose upon whole Nations, and lead them to believe what makes for their Purposes.

By the help of such Guides, the Community Second Vol.
to the Hist.
of the Reformation Ap.
B. 109. Lit-
tera origi-
nales per
Communica-
tem Regia. or Parliament of Scotland in the 13th of E. 2. assur'd the Pope, they knew and Collected from the Acts and Books of the Ancients, the very Year when they were first Possess'd of their then Seat, that just 1200 Years after the People of *Israel* went out of *Egypt* they came hither from *Spain*; that having driven out the *Britons* and *Picts*, they ever preserv'd themselves free from Servitude, and had hitherto dwelt free and quiet, till that Magnificent Prince, King of the English, Edward, Father of

A a the

the then King, innumerable Infested their Kingdom without an Head, and a People conscious of no Ill or Deceit, and then not accustom'd to Wars or Insults.

They surely, being then Papists, thought the Pope could give them a Dispensation to say any thing; or at least, if he were well pay'd for his Bull, would *Anathematize* all who held the contrary.

That both before and since, the Kingdom of Scotland was subject to the *Crown of England*, and that it has been amply Recogniz'd within time of Legal Memory, has been prov'd at large.

And however many Considerations may Evince, that much longer length of time than *Homage*, in evidence of their Subjection, has been thought discontinu'd, could not be enough to discharge it.

1. *Nullum tempus occurrit Regi.* "No length of time prejudices the King, is a known Maxim; which tho' it admits of Qualifications, there being some Privileges to which a Man may prescribe against the King, yet all will agree, That this could not affect the chief Rights of the Crown; especially, such an one as, according to what I cited out of Sir John Davis, even an Act of Parliament could not take away. Much less could any Prescription, which has its Force only from a tacit Consent of Prince and People.

Besides, continual Claim would preserve the Right, tho' the Duty had been much longer withdrawn.

Whatever private Persons may lose by Laches or Neglect, this shall not be imputed to the King.

1. Jus. 57 b.

The

The old Mirrour says,

" As to Alienations and Occupations of
 " Franchises reall appendant to the Dignity of Mirr. cap. 3.
Sect. 26.
 " the Crown; there can be no Voucher to war-
 " rant nor demand of View, nor Title of Pre-
 " scription of time: For as to such Dignities
 " no Man can be aided by exception of long
 " time; but such Avowries of long continuance
 " are to be accounted continuance of Wrong, ra-
 " ther than Legal Exceptions.

Suitable to which Briton, who writ in the Briton. ss.
p. 18.
 Name of E. I. says,

Nul temps est limit " No time is limited,
quant a mes Droits. " as to my Rights.

To Cite the Moderns to this purpose, would
 be endless.

2. Further, if this were Matter to be affected
 by Prescription, it ought to have been from the Rolls Abi-
tit. prescr.
ptn. f. 3.
169. n. 2.
 beginning of the Reign of R. I. for all his
 Reign is in the Eye of Law, within time of
 Memory

3. *Homage*, which is the Service perform'd in
 Testimony of the Subjection of the Kingdom of
 Scotland, not being Annual, cannot fall within
 the Rule of Prescription, neither is it within
 any Statute of limitation of Actions.

This appears by Cecil's Case upon the Stat. Devills. c. 4.
rep.
 32. H. 8. c. 2, which Enacts.

" That no Person shall make any Avowry or
 " Cognizance for any Rents, Suit or Service,
 " and alledge any *Seisin* of any Rent, Suit, or
 " Service, in the same Avowry or Cognizance,
 " of his, or their Ancestor or Ancestors, Prede-
 " cessor or Predecessors, or in his own Posse-
 " sion, or in the Possession of any other whose
 " Estate he shall pretend or Claim to have,

" above 50 Years next before the making of the
" said Avowry or Cognizance.

F. 21.
Upon this 'tis Resolved,

" That Homage and Fealty, and other such
" Accidental Services, altho' they become due
" within the time limited by the Act, and by
" the Laches of the Lord no Seisin is had of
" them; yet he may distrain for them when he
" will, for they are not within the Purview of
" the Act.

" 'Tis there observ'd, that a Tenure may be by
" Homage and Fealty, and yet they shall never
" be done to the Lords.

" As if Land held by Homage and Fealty be
" convey'd to a Mayor and Commonalty or other
" Corporation aggregate of divers Persons, in
" this Case they hold by Homage and Fealty, yet
" can't do them. And therefore tho' they should
" have enjoy'd the Land above 60 Years; yet if
" they alien the Land, the Lord may distrain for
" the Homage and Fealty.

" Tis further shewn to have been agreed at
M. VI. 22. a " That in a Writ of Escheat or Cese-
" savit, the Demandant does not alledge Sei-
" sin; and the reason is, that he claims the
" Land by reason of his Seigniory, and not by
" any Seisin in him or any of his Ancestors.

The Instance above of Land held by a Cor-
poration which could not perform Homage,
sufficiently refutes the Imagination which pos-
sesses some, as if there were a Merger or Ex-
tinguishment of the Homage, by the Crown of
England's coming to a King of the Scots.

Besides, as was resolved in the Case of Prox-
ies.

" Things

"Things which are not issuing out of Land,
"as parcel of the profits of Land, but are deriv'd
"otherwise, and due in other respects, altho'
"they be taken and had within certain Land, yet
"Unity of Possession shall not extinguish such
"things, of which nature are all Franchises, &c.

Again, "Altho' a thing be part of the pro-
fits of Land, and payable by such Person
"only as has the Land, yet if it had its Com-
mencement or Original for any Personal re-
spect, and not in respect of the Land, and so
the Person only is chargeable; such things
shall not be subject to Extinguishment by uni-
ty of Possession.

And however if *Homage* would not fall within
those Rules, yet all that could follow from it,
would be, that the Kingdom of *Scotland* being
annexed to the Crown of *England*, could not be
Granted out again, because as Sir T. C. has ob-
serv'd there would have been a Consolidation of
the Fee; but this would be far from freeing the
People of *Scotland* from Subjection to the Crown
of *England*.

It appearing, that King *James's* having the
Crown of *England*, was no prejudice to the Right
of the Crown; let's see how the Right stood
immediately before he obtain'd it; and that in
the Judgment of the best Advocate for the *Scots*,
Bishop Lesley, who was greatly instrumental in
influencing the Reception which their *James the*
6th had here. His words are these:

Etsi autem, jam a multis annis, nullus Rex Scotie Servitium illud Anglia Regibus presti-

"But altho' for many Years fince no King of Scotland has perform'd that Service

Leslie's de Successionis Jure p. 22.

terit; non est tamen consequens, ex Anglor. jure ideo Regnum Scotia, tum cum prefata Domina Maria Scotia Regina Nata esset, qui fuit annus regni Henrici Octavi tricesimus quartus, extra Dominium Regum Angliae fuisse, nullamque illis obedientiam debuisse. Sic enim Anglorum leges a parte dicunt, si tenens debitum servitium praestare Domino recusat, non ideo tamen Dominium suum amittere eum qui Dominus est, sed fundos Nihilominus sub potestate & Dominio sive signoria, ut vulgo aiunt, permanere.

Sed objiciet forte aliquis, per hanc eandem rationem Galliam quoque dici regno Angliae Subditam, quandoquidem ante annos centum & paulo amplius diadema Gallia jure penes

" to the Kings of Eng.
" land, yet it does not
" follow according to
" the Laws of the Eng.
" lish, that therefore the
" Kingdom of Scotland,
" when the said Lady
" Mary Queen of Scot-
" land was Born, which
" was the 34th Year of
" King H. 8. was out
" of the Dominion of
" the Kings of England,
" and owed them no
" Obedience. For thus
" the Laws of the Eng.
" lish clearly speak, If
" a Tenant refuse to
" perform the Service
" due to his Landlord,
" yet the Landlord does
" not therefore lose his
" Dominion; but the
" Lands nevertheless
" remain under his Pow-
" er and Dominion or
" Signior, as they com-
" monly speak.
" But perhaps some
" Body will object,
" that also the King-
" dom of France, by
" the same Reason,
" may be said to be
" subject to the King-
" dom of England;
" since

Angli
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Angle

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Anglia
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gliaRe
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nio fu
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*Anglia Reges fuerit,
quorum adhuc jus &
titulus inconcusse apud
Anglos manet.*

*Ad quod responderi
potest, inter titulum
utriusque regni Gal-
lia scil. & Scotia, quem,
Sibi vendicant Reges
Angliae, latissimum dif-
ferentia: Quamvis enim
Regnum Galliae jure te-
nuisse & Posseditse An-
glia Reges fateamur, tan-
diu tamen dum aliorum
occupatione a dicti reg-
ni Possessione excludun-
tur, illud horum Domi-
nio subesse nullo modo
affirmari potest; preser-
tim si hoc consideremus
quemadmodum, ex eo
tempore occupati illius
Imperii Galliae populus
a subjectione & obedi-
entia Anglorum Regum
prorsus descerit, seque-
totum occupantibus Gal-
lis dederit atque sub-
miserit. At de regno Sco-
tiae longe secus est.*

" since 100 Years be-
fore and little more,
the Crown of France
was with the Kings
of England, whose
Right and Title still
remains with the
English unshaken.

" To which it may
be answer'd, that
there is a very wide
difference between
the Title of each
Kingdom, viz. The
French and Scotch,
which the Kings of
England claim to
themselves. For tho'
we should confess
that the Kings of
England did right-
fully hold and Pos-
sess the Kingdom of
France; yet so long
as the English are
excluded from the
Possession of the said
Kingdom, by the
occupancy of others,
It can in no wise
be said to be under
their Dominion; E-
specially if we con-
sider this, How from
that time of occu-
pying the Govern-
ment, the People

“ of France, wholly
“ withdrew from Sub-
“ jection and Obedi-
“ ence to the Kings of
“ England, and wholi-
“ ly gave themselves
“ up and submitted to
“ the French, who oc-
“ cupyed the Govern-
“ ment. But 'tis far
“ otherwise concerning
“ the Kingdom of Scot-
“ land.

*Non enim in eo con-
sistit titulus sive jus
quod in regnum Scotiae
sibi Anglia reges arro-
gant, ut illud possideant;
sed ut pro eodem regno
ipsis homagium seu de-
bitti Servitii significa-
tio exhibetur. Quod et si
Scotia Reges Anglor.
Regibus praestare jam
inde a multo tempore in-
termiserint, non ideo ta-
men eosdem Scotia Reges
rede. E jure Usurpatores
injustos vne Possessores dix-
eris. Atque ita, optime
lector, videre est judicia
omnium cum equitate &
absque ullo animi affectu
Sentientium ex Anglor.
quidem jure & Testi-
moniis Scotia regnum in-*

“ For the Title or
“ Right which the
“ Kings of England
“ claim to the King-
“ dom of Scotland,
“ does not consist, in
“ that the Kings of
“ England pretend to
“ possess the Kingdom
“ of Scotland; But
“ that Homage be ex-
“ hibited to them for
“ the same, as a signi-
“ fication of the Ser-
“ vice due. The per-
“ formance of which,
“ altho the Kings of
“ Scotland have now
“ for a long time in-
“ termitted, yet you
“ cannot therefore Ri-
“ ghtly and with Ju-
“ stice, call the Kings
“ of

*fra Dominium Angliae
homagio prestando ob-
noxium & olim fuisse &
ad huc etiam esse.*

" of Scotland Usurpers
" or unjust Possessors.
" Therefore good Rea-
" der, you may see that
" in the Judgment of
" all who think with
" equity and without
" any partiality, even
" according to the Law
" and Testimonies of
" the English, the King-
" dom of Scotland is
" adjudged, by doing
" Homage, both of
" Old to have been,
" and still to be, with-
" in the Dominion of
" England.

All but his unprov'd assertion, That it would not follow that the Scotch Kings were Usurpers in setting up for Kings, without doing Homage for Investiture, is so apposite to the purpose for which I cite it, that it might seem writ by an English Lawyer, upon the present Controversy; and is so plain, that it needs no additional light.

CHAP.

C H A P. XXXIV.

The great Occasion of enquiring into the Nature of the Succession to both Crowns.

That Sir T. C's Admirers, particularly the Jacobites, have as much reason to except against his Authority as others.

Having formerly shew'd, by Records and Histories from the beginning of the English Monarchy, demonstrative Proofs, that the late King William of Glorious Memory, was King of Right as well as in Fact, fully justifying the present Act of Settlement, I should not here concern my self with the Nature of the Succession, did not Sir Thomas Craig's way of managing the Controversy about the Homage, and his admired Treatise of the Succession, make it necessary.

As I had observ'd before, he held, That the Kings of Scotland possess'd it at the time of his writing, by a much better Title than the English possess England.

In another place he says of Scotland.

" For almost 2000 Years, the next of the Blood did constantly succeed in a continu'd Series.

And before, he had ascrib'd to the King of Scotland a Title to the British Monarchy, as Walter, the first of the Family of the Stewards, was descended from the Race of the Welsh Kings, which he will not allow to our King H. 7.

Then as to the Title of our Saxon King, Edward the Confessor, Sir Thomas supposes, he U-
surp'd

Of homage
P. 374.

P. 418.

P. 125.

P. 163.

surp'd the Crown by the Assistance of the Normans, against the Laws of England; seeing he was not of the full Blood.

As to William, he all along takes him to have came to the Crown meekly by Conquest, and in Right of a Conquerour; upon which Postulatum he says.

' We must inquire if there was any Homage due of ^{homage}
from Scotland to the King of England, to whom p. 261.
' it ought to accrue after the Conquest, whether
' to the true Heirs of their former Lord, or to
' those who succeed him by Force and Arms:
' for the English themselves will not say that
' Force and Arms, do either give or take away
' an other Man's Right.

In his Treatise of the Succession, he supposes Of Success^{t. 132.}
England to be an Hereditary Kingdom, that is,
according to the whole Scope of that Book, to
the next in Blood, handed down by Queen Elizabeth's Ancestors for above 2000 Years.

' By the Custom of Succession to the Crown t. 279.
' of England, he says, the next in Blood, where-
' ever Born, was always received, as readily as if he
' had been Born in England, and this shall be fully
' made to appear by constant Use and Custome:

But if it be the Fundamental Constitution both of England and Scotland, that the next in Blood ought always to be received, this will evidently Militate against that Title which both he and Sir George Mackenzey have contended that no Act of Parliament could set aside: and if they be right in their Notion, as will appear when I come to consider the Scotch Succession, it will carry the right to another Family, as well as be a weighty objection against the Annexation of the Crown of Scotland, or Devolution

volution of that Kingdom, to our Imperial Crown, by Reason of the accession of J. 1. to it.

I doubt not but if the true Publishers of Sir Thomas Craig's Book appeared, they might be known to be Men who have not taken the Oath of Allegiance to her present Majesty, and if they believe the pretended J. 3. to have been the Son of the late King James, or of his Queen during the Coverture, may think Sir Thomas Craig's Reputation may serve for Reason and Authority: and having him they think on their side, may slight any Confutation of him as the best way to answer what they are resolved to oppose, in spite of all conviction.

Nor indeed, are such Men's scruples to be satisfyed, till the Power of France, which raises and supports those Scruples, is abated.

Even Dr. Hicks, the most Learned of the Nonjurours, has agreed that the Divine Right follows upon, or is inseparable from the Civil: but as my Busines is with *magni Nominis umbra*, the shade of a great Name, conjured up to raise new Storms, I shall do my indeavour to lay it.

The Dedicatoe says,

" Sr. Thomas Craig, was perhaps the best
" qualified of any Man in that Age, for such
" an undertaking; being a Man of Universal
" Learning, great Judgment, Observation, and
" Experience, and having so thoroughly stu-
" dyed the Divine Laws, the Laws of Nature
" and Nations, as well as the Civil, Canon, Foudal,
" and Municipal Laws: Such were the Foun-
" dations upon which he rais'd this noble Super-
" structure, so closely compacted together with

" the

Vid. Pref.

Jovian.

" the utmost strength of Reason, and Em-
" bellish'd with all History, Sacred Ancient, and
" Modern. He knew well both to overthrow
" the *Deceitful Fabrick*, which his Adversary
" had rais'd upon the Sand, and to build upon
" a Rock with suitable Materials.

I am no more concern'd for his *Adversaries*
Notions then his; but shall shew his *Fabrick* as
Deceitful as the *Jesuit Parsons's*.

In the mean while cannot but observe, how
these Men are put to it for Authorities, when
they set up one as Sacred, which they them-
selves must as much condemn; if they are not
made up of as Strange and *Heterogeneous* a com-
position, as their *Oracle*.

Sr. Thomas, taking notice of Doleman's Ob-
jection against the Union of England and Scot-
land, because in the latter, there are neither
Bishops, nor Arch-bishops, nor Deans, Archdea-
cons, nor other such Ecclesiastical Dignities;
says, " I am much of St. Jerome's opinion,
" That those Dignities were first *Invented* by
" the Enemy of Mankind, and introduced into
" the Church for cherishing *Pride, Ambition,*
" *Contention*, and *Riches*: for Jerome thought,
" that the Name *Priest* was sufficient alone.
" (and I think he was a little wiser than my Ad-
" versary,) as at this time many think the
" Names and Offices of Ministers in the Church,
" are enough, seeing every Minister is a *Bishop*
" in his own Church.

His Admirers, and particularly the Dodwellian
Jacobites, must needs exclaim against him in
this matter: and I may well ply one Jacobitish
Authority, against another: For Mr. Dodwell con-
cludes the Body of the English Nation, to be in a

Of Success
f. 358.

State

State of *Schism*, for which he wisely appeals to the Popish *Bishops*, because a few of our *Prelates* were depriv'd in virtue of an *Act of Parliament*, or rather chose not to qualify themselves for holding their *Baronies*: on the other side Sr. *Thomas* accounted them none of God's Creatures but the *Devils*. The *Hicksians*, will be as loath to receive for *Gospel* all that Sr. *Thomas* says in relation to civil Power, and the right of Succession to it: not but that according to his usual Inconsistencies, some of his *Postulates* might please them very well, did he not equally overthrow them.

A great Argument for the uncontroulable Power of Kings, particularly in Dr. *Fern* and *Salmasius*, has been from *Samuel*'s describing the ⁴ *jus Regis*, 1. Sam 8. 11. &c. as such Authors hold, the rightful manner of the King. That "he shall take the Substance and Effects of private Men, yea their Children and Vineyards, and give them to his Servants, as he should think fit. According to which Dr. *Hicks*, with his well contrived distinction between the *Imperial Law*, which gives all to *Cesar*, and the Political in which the King condescends to some ordinary Rules of Government, has held and not publickly retracted, That Subjects are and ought to be *Slaves*, if the King pleases; and having Enumerated the Rights, of a *Sovereign Prince*, among the rest, to have the *Legislative Power*, or the Power that makes any Form of words a Law, he says, *In all Sovereign Governments Subjects must be Slaves, as to this particular, they must trust their Lives and Liberties with their Sovereign.*

* Vid. Dr. *Fern's Reply*
to several
Treatises.
P. 8.,
It is the *jus*
Regis which
most Au-
thours ac-
knowledge.
& *Salmasius*
cont. a Milto-
num.
Sr. T. C.
of the Suc-
cession F. 85.
Jovian p.
p. 245.

But then he tells us the English Realm is a perfect Sovereignty or Empire, and the King, of England by the Imperial Law of it, is a compleat Imperial and Independent Sovereign, to whom the foresaid Rights of Sovereignty do inseparably belong.

Thus the English are Syllogistically prov'd Slaves, and the Lords and Commons, if this be according to the Divine Law, ought to give up all pretences to any share in the Legislature.

But Sr. Thomas Craig, like a rank Presbyterian as he was, differed mightily both from Dr. Fern and Dr. Hicks, and other new modellers of Governments, by an Imaginary Pattern from the Mount.

Sr. Thomas is positive, that Samuel in that place does not set down the Laws and Rules of Government, but only foretells what would fall out under Kings; to wit that the People, should in vain Cry to God, whom they had forsaken, for help, when they came to suffer such evils and calamities from their Kings.

Where he too plainly Insinuates, that the People of Israel in their chusing to have a King forsook God.

Before that he had sayd.

When God ordain'd a Form of Government for his People, and gave them his Laws by Moses, among others he also gave the Law, and declared what the manner of the King should be, that should be set over them.

Not here to enquire what Form of Government God Ordain'd, the manner of their King when set up, may appear from that of Deus. 17. v. 14. 15. &c. mention'd in

Sir

Sr. Thomas his Book, which requires the Jews to set him King over them, whom the Lord should chuse from among their Brethren, but no Stranger. Their King was not to Multiply to himself Horses, nor Wines, nor great Treasures of Gold or Silver, and when he should sit on the Throne, he was always to have the Law of God before his Eyes. Sr. Thomas says further, God is pleas'd to appoint the King what he was to do, and what he was to avoid, that he may prolong his Days in his Kingdom, and his Children.

F. 97.

The Law of Moses to the Jews, he looks on as a Divine Law to other Governments: and after mentioning our Obligation to attend to the Divine Law, in England especially, which he says is Properly called the Kingdom of God, he adds.

Neither are the examples which we are to bring as propos'd to us by the Divine Law, unless they be found to be inconsistent with the general Rule and Analogy of Faith, to have less weight than those things which are expressly commanded us.

Where, with one of his usual Absurdities, he supposes that examples may be proposed to us by the Divine Law, which yet are contrary to the Analogy of Faith.

He says, God made Saul's Kingdom to last only for his Life, and would not suffer it to descend to his Heirs, by way of Punishment, and for his Transgressing the Commandment of the Lord.

Further he says, in the Kingdom of Israel the People advanced Kings upon the Death of their former Kings. Again in the Kingdom of Israel we hear of nothing but continual Butcheries, Plots, and Conspiracies among the People.

Does not therefore his Rule Authorize not only

only the taking the Crown from Saul's next Heir, but the little or no regard paid to Proximity in the Kingdom of Israel. Admit, for Argument sake, that the Children of Israel had not the least regard to the Royal Family, but as they were to take one from among their Brethren, had set up one of the meanest of the People, lets see whether Sr. Thomas Craig does not find out a Divine Right, for him: "The saying of Hannah the Mother of Samuel is of all other Testimonies from Scripture, the most clear and manifest, Sam. 2.8. *The Lord raiseth up the Poor out of the dust, and liftest up the Beggar from the Dunghill; to set them among Princes, and to make them Inherit the Throne of Glory:* and she Subjoyns a Reason, because the Pillars of the Earth are the Lords

"That most Religious Woman says he, acknowledg'd that it was by the Institution and Blessing of God, that Kingdoms were Hereditary.

But see how eagerly Men catch at a Word, that seems to make for them, without regarding more than the Sound. For,

1. If this had been a clear Expression of what were otherwise doubtfull, the doubt must needs have still remained; since 'twas only the Expression of a pious Woman, not deliver'd as any inspir'd Doctrine.

2. But what is most remarkable is, that according to the manifest import of it, when the Crown is removed from one Family to another, how mean soever the new King may have been, if the Inheritance of the Crown be continued to him and his Posterity, or to Successors for whom he has acquired a right, this is of God:

He makes them to inherit the Throne of Glory, and they become Pillars of the Earth, not to be shaken, till God either for their own Sins or the Sins of a murmuring and ungrateful People, think fit to remove them.

This Text therefore I may, under Sr. Thomas Craig's authority recommend to the consideration of all who oppose the Act of Settlement, and the submission to it, required by God of the Subjects of England and Scotland.

To shew further why the Jacobites must renounce the authority of Sr. Thomas Craig, for a Presbyterian and Republican, I must desire them to consider this passage in his admired Treatise.

V. 401.
 ' Seeing that from the Laws of the XII Tales, which took the name of the most Ancient Law, it is provided that *Salus populi suprema lex esto*, that is, let the Safety of the People be the Supream Law; All our Cares and all our Endeavours ought to be directed to that End, neither ought such Inconveniencies as *use to happen*, tho' rarely, be so much minded, as those things which concern the Safety of the State and of the People.'

This Rule indeed he applies only to answer the Inconveniencies likely to be, and which have often happened upon naming the Successour to the Crown, in a Prince's Life time, upon this rule he contended that it was necessary, Queen Elizabeth's Successour should be nam'd, the States of the Kingdom pressed it; but that wise Queen doubtless for Weighty Reasons declined it, such a Declaration not being so absolutely necessary, as the Exorbitant Power of France supporting a Competitour, contrary to the solemn Treaty

Treaty of peace , had lately render'd it.

But as Sr. Thomas Craig has received the Law of the XII Tables, as the Law of Nations in that particular , it may appear that where the case concern'd his own Country, he has pursued the *Maxim* in its utmost extent.

‘ Granting, says he, that the Prince has sworn ^{to the Commonwealth and to the People, I} to the Commonwealth and to the People, I would have Doleman to distinguish the Commonwealth, from all the single People in it.

‘ If the whole Commonwealth, or any particular Person, hold a Fief of their Superiour Lord, that Commonwealth or *whole Community*, is bound to that Superiour, and the Lord to that Commonwealth; and yet what is done to the Commonwealth, is not sayd to be done to every particular Person in it. Neither, tho' every single Person has offended against the Lord of the Fief, has the Commonwealth offended, unless it be sayd that what was done was by Common Council and Advice ; neither, tho' the Superiour had wronged one, two, three, ten, or twenty, in a Commonwealth, can he be sayd to have wronged the Commonwealth, or that he loses the *jus Dominii directum*, his Superiority : we know that by the Feudal Law, the Lord of the Fief loses his Superiority, or *Dominium directum*, for the same Offences for which a Vassal forfeits his Fief, if the Vassal offends against his Lord. But here the King is Lord or Superiour, the Commonwealth or Community is *Vassal*, or instead of a *Vassal*.

‘ Wherefore tho' the King has offended many

wicked Persons in it, has opprest or kill'd this or t'other Man, taken away their Effects, or polluted their House, he cannot be said to have transgressed against the Community, or to have violated or wrong'd it. Neither does a less number, as they say, make the Common-wealth; neither can the Faults committed against single Persons, be drawn to the Body of the Common-wealth.

One would think, here were enough to stop the Mouths of all Non Jurants, and to justify the disowning King James, upon the several Breaches of the Original Contract between the Prince and Community of England, enumerated in the Bill of Rights.

He manifestly looks upon the Community as a single Person Contracting with the Lord of a Fief, and agrees, that the Lord not performing his part, loses his Seigniory.

Nor is this bare Implication; for he is positive, that this may Rightfully be.

He adds,

F. 202.

' But Doleman will infist, Cannot a Prince offend so against a Common-wealth, that he may be lawfully and deservedly renounced, and Disclaim'd by the Common-wealth? I Answer, That as long as he continues a King and Sovraign, he cannot. Nevertheless, sometimes there may be a Case, in which a King may deservedly be Disowned by the People: As, if he make a Free and Independent Kingdom to hold of another, as John Baliol made the Kingdom of Scotland Subject to England.

Here is as much as need be urg'd, to justify our late Revolution and A&T of Settlement; since he admits there may be Cases in which, accord-

ing

v. W. M.
Sect. 2.
Cap. 2.

ing to the Confessor's Law, and the Learned Mr. Falkner's Christian Loyalty, a King ceases to be a King, and may well be renouned and disown-ed, as he renounces that Authority which God has given him.

Yet to see the Partiality of Writers, tho' Sir Thomas will have Beliol to have lost his Right, for payng that Homage to the Crown of Eng-land which was manifestly due; he will have it, that King John might be pardon'd or excus'd for making England Tributary to the Pope.

However, the States of the Kingdom and the then King of France rightly judg'd, That thereby the Throne became Vacant, and the Ad-ministration during the Vacancy, fell to the Peers.

CHAP. XXXV,

The Absurdities and Inconsistencies of Sir Thomas Craig's Notions of Government, and the true Result from them.

IN this Controversy, says he, concerning Monarchy, our first Enquiry shall be con-cerning its Institution; and we contend, that Monarchy is of Divine Original, ordain'd of God, and that no other Form of Government obtain'd among his peculiar People; that no other is so agreeable to the Laws of God and Nature. Yea, moreover, I undertake to prove that it has been received by the constant Pra-ctice of all Ages, and the perpetual Custom of all Nations.

New would any believe that this gteat Man would overthrow all this in the same Breath; but his very next Words are;

' To begin then as we ought, with the Law of God, who is Infinitely Wiser than Man: We find it Recorded in Holy Scripture, In those days there was no King in Israel, but every Man did that which was right in his own Eyes. Which words, says he, import what a Disorder and Confusion of all Things and Ranks of Men, obtain'd among the People, untill God was pleas'd to establish Kingly Government in *Israel*.

Is this to begin like such an able Builder as he is represented, instead of laying a Foundation in the Primitive Institution, to shew the Consequence of a late Appointment?

Besides, had he not sayd immediately, before that no other form of Government, but Monarchy, had obtained among his People, and this had been the constant Practice and perpetual custom of all Nations, when yet himself shews that it was not so at that time with God's peculiar People, and that God did not please to establish Kingly Government among them till afterwards.

By what I cited out of him above it appears, that he would have Kingly Government to have been a Form appointed by God's Law delivered by *Moses*, when yet of his own shewing it was only the Manner of the King, whom they should set up, when they should, as Sir *Thomas Intimates*, forsake God in shaking off the Theocracy, accordingly as *Samuel* foretold the Consequences, and God afterwards declared, *he gave them a King in his wrath*.

I had expected from him a formal Assertion of that Patriarchal Power which Sir Roger Filmer had set out with all the advantages that a good Stile could give Palpable Contradictions, and which the acute Author of two Treatises about Government, has Answered too fully to be Re-
ply'd to but he seems too admit that there was no King till after the Flood; not pretending to give any Authority but Plato, whose Treatise of a Common-wealth is diametrically opposite to him.

The First King he agrees to have been Nimrod,
the great Grand-child of Noah by Cham, and that
F. 7.
he was made King by a willing and uncomelled
People: Tho' most People, he owns, reckon
him the first Tyrant.

Where he manifestly places the first Right to
Kingship in a voluntary election, and that to the
prejudice of the supposed Patriarchal Right,
not only of Noah's eldest Son Schem, but of the
Eldest in his own Branch of Noah's Family.
For Nimrod's Father was *Cush*; all that are men-
tioned as his *Lawful Sons* are, *Seba*, and *Chavila*,
and *Sabberha*, and *Rabma*, and *Sabibeca*; the
Scripture adds, *Moreover Cush begat Nimrod,*
Geu. 10. 7. 8.
Bib. Lat.
he began to be Powerful in the Earth

Where not being mentioned among the Sons,
he seems to be got of an Hand-maid or Concubine.

To prove the Divine Law, Sir Thomas cites Ci-
ero, who affirms 'That nothing can be more ac-
ceptable to God, than a Company or Assembly
of Men combin'd together in Society by Law,
which are called Cities. Neither, says he,
can any thing else be meant by Building so
F. 7.
many

many and so Considerable Cities as are mentioned in Sacred History, but that by his mean and Conduct, Men did first begin to incorporate into Societies.

Very good: thus far it might seem, that whatever Form of Government was agreed on at the first combining together into a Society, this, according to the Election of Nimrod, was an Original contrall, acceptable to God, and Authoriz'd by him.

To proceed,

What else was a City then, but the Union of many Families under one Prince?

Gen. cap.
+ v. 16. 17.

Cap. 6. v. 2.

As if it were impossible a Society could agree upon an Aristocracy, or Oligarchy. However was there no City before the Flood? Truly it falls out unluckily, that Cain who was the first that separated from God's People, or as the Text is, went from the Face of the Lord, built a City, and call'd it by the Name of his Son Chabac, The Marriages of the Sons of God, with the Daughters of those Men, is plainly assigned

for one of the causes of God's destroying all the Generations of Men from the Face of the Earth, except those which were preserved in Noah's Ark,

So that hitherto Sir Thomas has fell upon very unlucky Mediums.

Having no other Notion of a City but as under one Prince, he adds, ' As a Family was only a Company of Children, and others, under the Head or Master of a Family, who was the Major domo. Wherefore as the Multiplication of Children gave rise to many Families, who not agreeing well among themselves,
chose

chose one, to whom all the rest were to be Obedient, and by whom they were to be Govern'd in common; so they made choice of a robust and stout Man for their Head, as Hunters commonly are, who was capable to defend them by force against Violence and Injuries. Many of those Families combining together, grew into one Society or City, of which *Nimrod* seems to have been the first contriver.

To pass by the sacred Authority, that *Cain* had a City before him, consider the Monarchy as one City compos'd of several such as *Cain*, Sir Thomas manifestly founders it in *Election*. For,

1. In every distinct Family besides Children, he supposes others; they therefore not being in that Family in which Nature placed them, came thither by *choice*.

2. The Combination of several of these Cities or Families, into or under one Monarchy, is of it self a manifest *Choice*: they, out of an Opinion of a Man's being able to defend them, chusing to have him for their Head, rather than the Head of a Neighbouring Society.

3. As they judge for themselves upon what Inducement 'tis fit to enter into such a Society, they may chuse another, where Nature has well fenced them from dangers from abroad; and therefore some Man eminent for Wisdom may have been made King, for having proposed such a Regulation of the way of Living together, that all happily Unite in promoting the common Good, by which Plenty and Prosperity is secured to every one in particular. These Regulations being Universally agreed to, became

Laws

Laws, and hence the Proposers of them have been esteemed Wise Law-makers.

Some of them, like *Lycurgus*, may have divested themselves of Power for the good of all, and proposed such Participations, or rather Subordinations, as might be the most effectual means to prevent Competitions and Animosities.

Hence arose the happy Constitution of the
vid: Cicero
English Monarchy, which *Cicero* plainly saw
de Repub. in *Idea*, as the most perfect form of Government.

4. To pursue the Precedent of *Nimrod*, whom Sir *Thomas* agrees to have been the first King in the World: As he was chosen by a willing and uncomelled People, without regard to the Right of Proximity to the Father of Mankind; the Reason of chusing him, did not extend to his Son, unless he was of full Age at the Death of his Father, and of equall Ability to protect the People. Therefore till there came to be an express agreement that his Monarchy should go to the next of his Blood, there must have been some other Foundation than the Natural Right of Birth, contrary to which, and for a widely different Reason, *Nimrod* was made King.

F. III. Where then was any Attention to what Sir Thomas pronounces the Voice of God and Nature, That he who is next in Blood has Right to the Inheritance? He says indeed, That it was upon these Terms, that their Children should succeed, that Kings acquired Kingdoms.

What might arise upon an Acquisition by force, is of another Consideration, tho' in Truth his main Scheme, in Relation to the English Government

vernment, will appear Built upon the supposing W. I. an absolute Conquerour, against which I have produced some Evidences, and shall as much as may be requisite, without yet producing my Proofs at large, that he was in no respect a Conquerour over more, than those who opposed his Legal Title.

Sit Thomas says, *No Tolerable account can be given why his Adversaries should allow Hereditary Rights, or the Rights of Inheritance in the Successions of private Men, which they cannot deny to be deriv'd from Natural Right, and refuse it in the Succession of Kings; nor why the Royal Children or Descendents should be Defrauded of the Just Reward of their Merits and Virtues, or of their Right to succeed them, more than private Men can be refus'd or defrauded of their respective Inheritances.*

F. 110.

Here he goes upon a Supposition that he prov'd, which he no where does, That, for the next in Blood to Succeed to every Crown is a Natural Right; and that all Nations have given such Rewards to the first of their Kings, that their Descendants, by the Fundamental Laws of the Kingdoms, were always to inherit in an uninterrupted Series of Successions.

But 'tis to be considered,

i. What he proves to be the Natural Right of Succession in private Families.

a. As to Crowns.

He cites *Papinianus* and other old *Civilians*, to prove that the Inheritance of Parents is due to Children from Natural Right or Reason.

Yet

Yef he agrees, that this Natural Right may be forfeited.

E. 98. 99.
Numb. 26.

But what is most unlucky, is, That the Rights of all the Sons that a Man has, tho' severall at a time, he proves ordinarily to be equal. For he cites the Law of Succession which God appointed by *Moses*, upon the Case of *Zelophehad's* Daughters. *If a Man dye and have no Son, then shall they cause his Inheritance to pass to his Daughter. And if he have no Daughter, then shall ye give his Inheritance to his Brethren. And if he have no Brethren, then shall ye give his Inheritance to his Father's Brethren. And if his Father have no Brethren, then shall ye give his Inheritance unto his Kinsman, that is next to him of his Family.*

He shews further, from the 36th. Chapter, that the Inheritance was not to be Transferr'd from one Tribe of the Children of *Israel* to another. This, he says, is of the Nature of those Precepts which continually bind us. Upon this he observes, ' That this Law of Succession commands first, that when any Man dies his Children shall succeed him: And if his Inheritance be not to be divided, then his First-born, whose Right God always favours, shall possess it.

But is not so fair as to own, that according to this, the Inheritance was as much to be divided among *Males*, as among *Females*; as only one Son, and one next Kinsman is nam'd, so is but one Daughter: so that Son and Kinsman, stand for all Sons, and all Kinsmen in the same degree, as well as one Daughter, stands for all Daughters.

That this was the meaning is evident; unless we can suppose, the Divine Law different upon

the

the falling of the Inheritance to a Man's own, or his Father's Brethren : For these were to succeed as one Heir. And it appears, that there had not then been any distinct provision for the Elder Son : For afterwards it was declar'd only in one Case, that a distinction should be made between Sons in sharing the Father's Inheritance ; and even in that Case, the Eldest Son was to have but a double Portion, which was when a Man had two Wives, one loved and the other hated : In that Case, it was provided, That the Affection to a Wife, whose Son was the Youngest, should not prejudice the merits of the Eldest.

Deut. 21.
15, 16, 17.

Besides, if the Voice of God and Nature had been so clear, as Sir Thomas supposes, that the first in Blood should have the whole Inheritance, how came it to be a Doubt which needed a Divine Solution ?

Further yet, the Law that no Inheritance should go to one of a different Tribe, if of perpetual Obligation, as Sir Thomas contended that it is, was an effectual Bar to their James's succeeding by any other Right than the Declaration of the States of the Kingdom of England, unless the Right of Succession to Crowns be wholly different, and so fetch'd from an other Ground.

Having seen what work he makes with the Law of God, and Nature, let's see whether he's more happy with the Law of Nations, and the Civil Law, from which he derives Succession in a Monarchy.

Here in the first entrance he quits the Law of God and Nature : For he says, Succession in a Monarchy is from the Law of Nations, and from the Civil Law.

Cap. 24.

For

For the Law of Nations, he takes *Vlpian's Definition*, That which all *Nations commonly make use of, or which is common to all Men among themselves.*

W. 113.

Then he says, ‘ There is the same Reason for the *Law of Nations*, and the *ancient Civil Law*. Yet speaking of the *Roman Emperours* and the *Kingdoms of France*, and the *English Saxon*, he says, That it may be doubted whether Succession took place in those Kingdoms.

What is this but a plain Confession, that Succession in Kingdoms was not by the Law of Nations? for that which is not receiv'd by *all Nations*, is not within the Definition which himself uses.

F. 102. A
Prince may
be disown'd
407. Status
Populi.

W. 220. 22.

He says, ‘ In truth, during the Times of the *English Saxons*, the Form of the Monarchy was not well fix'd. The whole Progeny of the *Heptarchick Kings* is confus'd.

Nay, he says, ‘ When the King dy'd leaving only Young Children to succeed, the next in Blood, if he was a Man of Courage, did now and then, and for some time Succeed, which was also done in *France*, and was most commonly practised among all the Northern Nations,

What is this but a Confession, that this was the Law of these Nations, to chuse a deserving Person of the Family before the Son of the late King, when he was held unfit?

But then he will have them forc'd to this by the *necessity of War*, which is a yielding, as much as can be desir'd, that all Rules of Descent ought to yield to the Necessities of the Publick, and have generally done so: And that the People, according to their several Customs, were Judges

Judges both of the Qualifications of Persons, and the Necessities of the Publick.

'Tis worth observing, whether he is more fortunate in his Inferences from the *Civil Law*, of which it must be agreed, that the *Twelve Tables* were the Foundation, and the truest Transcript of the *Law of Nations*, being an abstract of the *Gracian Polity* transplanted to Rome.

He cites *Justinian* saying, *The Praetor* fol. F. 109,
owing Natural Reason, decreed the Possession even of Goods to Children, tho' they were set free from their Fathers Tuition, contrary to the Law of the 12 Tables, that is contrary to Statutes and to the Civil Law.

Sir Thomas is express, that by the Law of the F. 113.
12 Tables, the Children of Sisters who were Marryed into another Family, and did not keep the name of the Grandfather, were not admitted to the Succession; which shews that for *James the 6th of Scotland*, to Succeed to the Crown of *England*, was contrary to the Law of the 12 Tables, and the Civil Law.

Further, by that Law continued downwards, all a Man's Children were as one *Heir*, and as Sir Thomas observes *Justinian* calls *Children Successours of their Fathers Estate, by Natural Right.*

This, as *Tacitus* shews, was the Law received among the old Germans, every Mans Children were his Heirs, and 'twill appear that the Law of *Heditary Kingdoms*, in relation to the Royal Family was the same.

However it will appear from Sir Thomas himself, that the Law of *England* differs from what he sometimes contends, and at other times denies, to be the *Law of God, of Nature and Nations.*

That

That all his Pomp of Authorities from Law of God, Nature and Nations, to which backs the Civil Law of the Romans, does concern the Question of Succession to Crowns; appears by the Differences which he makes between the Rules of the respective Descendants.

1. Foreign Birth he supposes to hinder descent of private Inheritances, not of Crowns.

2. That private Inheritances may be forfeited, but that the Right to Crowns cannot: accordingly, tho' he agree that "all Rights, Divine and Humane, all Laws, and Reason it selfe bar him from Succeeding, who acquires it by Crime, neither can a Son, who kills his Father or his Brother, in hopes of Inheriting aff them, be admitted to the Succession, whilst they purchased with the horrid Crimes of Patricide or Fratricide; yet, because Men guilty of such Crimes, have been made Kings, we then could not be questioned for what they do in private State, merged in the Policy, will have these Crimes to be no Bar to a Right of Descent.

3. A third difference he says, in the Succession of private Men is, that the Brother succeeds not his Brother, nor the Sister to the Brother or Sister, unless they are of the same Blood.

But we see it is otherwise in the Succession of the Crown. For tho' the Brother or the Sister be only of the same Blood by the Father's side, and not of the whole Blood, they notwithstanding Succeed to their Brother. Thus before the Conquest, the Sons of King Edward, which he had by several Wives, and by Concubines, Succeeded one to another,

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wit Edmund Succeeded Aibefian, and after Edmund his Brother Eadred. To Edmond Iron-side Succeeded Edward, tho' begotten by their common Parent Ethelfred, by another Wife, to wit Emma Daughter of Richard Duke of Normandy : and lately Queen Mary, Succeeded Edward 6. Queen Elizabeth Succeeded Mary, tho' we all know they had different Mothers.

According to his way of jumbling together matters of a very different Nature, he here takes all these to have come in by a known rule of Succession, tho' he in his Treatise of Inage had made Edward the Son of Ethelred the Usurper, because he was but of the half-blood, nor makes any distinction between Successions by Virtue of Acts of Settlement, or present Elections, and barely by descent.

And 'tis evident that unless these Successions were by Virtue of Prior Settlements of the Crown, immediate Elections, himself has condemn'd several of them in the Instance of the Confessor, to whom he here allows a Title as fair to Edmund ; and yet his own Hypothesis furnishes an other objection, besides that of the half-Blood.

To prove the supposed undoubted Right of their James, to the Crown of England, he says, remains only to be enquired who dyed last what was duly Invested and Seized of the Kingdom of England, and who was the Lawful and next Heir to him.

But in the Case of the Confessor, he passes Canute the Dane, and his 2 Sons Harold, and Hardicanute, who had successively been duly seized, and tho' the Confessor was of the half-blood to Hardicanute, he had Heirs of his whole

Blood which ought to be preferred, in Rules of Descent to Publick, as well as Private Inheritances, Sir Thomas observes several other differences between Successions to *Crown*, and to *private Estates*, besides those mentioned above. Since therefore the Rules of Descent are different, so must the Ground of those Rules.

'Tis impossible that the *Law of God, and Nature*, should give a *private Inheritance* to one, and a *Publick* to another: therefore as the Law of God Co-operates with Nature, or the Law of Nature, to make a private Descent; so it must with some other Law or Rule, to make a Right to a *Crown*: and the Right which results from such a Co-operation, must be as Sacred or Divine, as that which is from God and Nature.

Sir Thomas speaking of the doubt, whether *Proximity, or Representation*, ought to have place in Succession to the *Crown of England*; says,

' But seeing this whole Question is about the Succession of the Kingdom of England, it is therefore to be determined by the Law of England, and the Custom of Succession to that Crown, whence we are to form our Judgments concerning the Right of Representation.

Where, after all the flourishes about the Laws of God, *Nature*, *Nations*, and of the Romans, he is forced to own that nothing but the *Law of England*, can settle Mens Judgments,

This Law then, if it have due regard to that which he owns to be the *supream Law*, the good of the People, is that which Induces or Occasions the *Divine Right*, and without that, especially contrary to it, there can be no Right.

The

The Apostle says, ἡ γὰρ ἵστη ἐξουσία ἡ μὲν ἡ Ῥωμ. 13.
θεοῦ ἀλλὰ τὰς ἐξουσίας, ὃν τὸν τεταγμένας εἰσίν. For
there is no Lawful Power but from God, the
Lawful Powers, or Authorities in being, are
placed in their regular Order under God.

A certain Person, who seems since to have re-
pented of many of his Arbitrary Notions, has
argu'd, That this was meant only of Persons
cloath'd with Power, and that these were Abso-
lute: upon this supposition he agreed, that
Usurpers were not God's Ordinance; meaning
Persons who came into Government without Ti-
tle; but suppos'd, that if they had Title to the
Government, they could not be Usurpers of
Power, or, as *Grotius* has it, in *partem non suam*
involare, violently seize a part which does not
belong to them.

Finding that Scheme would not wholly suit
his coming into the Government upon the *Revo-*
lution, that he might have the Credit of va-
rying from avow'd Principles as little as possible,
he professes he had occasion to retract nothing
but his asserting, That Usurpers are not God's
Ordinance. And thus he came in without giv-
ing due Honour to a Government which Dignify'd
him.

Some have found out another Scheme: For
taking it for granted, that Persons once in
Power according to a Rule of Descent, were to
be look'd on as cloath'd with Authority from
God, tho' what they exercis'd was not warrant-
ed by Law (as if God gave any Authority other-
wise than as co-operating with the Law) will
have it that such are to be *Obeys* as Powers spo-
ken of in the Text, *Passively*, tho' not *Actively*;

as if not doing what was enjoynd could be a Fulfilling the Law.

These gross Errors, I take to proceed from the want of due attention to the original Word, used in relation to the Duty of the Subjects; which, throughout that Chapter, refers to the *Tatlicks*, or Military Discipline: according to which every one is to act in his due Order.

But the Subversion of the Ends of Government, is, as if a General of an Army turn his Cannon upon his own Men.

1 Pet. 2. 13.
14.

And 'tis observable, that the same Word, which St. Paul uses to enforce Obedience to Authority, as coming from God, St. Peter applies to the Creature or Creation of Man; and tho' he manifestly takes Kings to be such Creatures; yet he requires Obedience to them for the Lord's sake; which shews, that God cooperates with the A&t of Man which sets them up.

But how much soever Cobweb-Niceties have perplex'd what were otherwise very plain, from the time that God has given a Legal Establishment to any Power, it has become his Ordinance; till then, it was no Lawful Power, and not his Ordinance, or authoriz'd by him.

As the Person thus establish'd, is ascertain'd by a Divine Right, so is the manner in which he enjoys the Power, whether as a Dictator, to himself for Life Absolutely; or to him and his Heirs in a limited way both of Descent and exercise of Power; or without Limitation as to either.

Sir Robert Filmer and others, have confounded many with the indivisibility of Supreme Power; and certain 'tis, that Power in the abstract

tract is indivisible; yet the same undivided Power may, by mutual Agreement or otherwise, be in different manners communicated to several, sometimes in the same manner.

Vid. Grot.
de Jure bellū
& Pacis Ib.
modum ha-
bendi potes-
tatem.

There has been no less abuse of the Notion of Co-ordinate Powers, which many have carry'd so far, as to deny the Supremacy of the King; but take it in a proper Sense, as ordained by God, along with, or as well as the King; and, possibly, there may be no harm in it.

Governours or Rulers sent by him, have no Authority but what dies with him; but if there be any Power Ordain'd by the same Authority which set him up; that Power continues during Vacancies.

Thus whereas Common-wealths Men will have it a perfect Anarchy, when the Right of the Reigning Family determines; according to the Judicious Pufendorf, by virtue of a double Contract, where the Fundamental Constitution is Monarchical, as in England, a Monarchy remains.

Vid. Puf.
de Interpre-
tationis.

Till the Representatives of the People can meet, the Administration is with them whom the privilege of Birth has made the first civil State of the Realm; and they as it has been here from time to time, upon occasion, direct Writs of Summons for Conventions: which prevents all that Confusion, which Sir Thomas Craig and others suppose unavoidable upon Vacancies.

Sir Thomas would be thought to argue, That while a Person once Legally Invested with Sovereignty is alive, there is no Case wherein the Government can be Administred otherwise than in his Name, and for his advantage and benefit; which I shall soon shew that he gives up.

C c 3

But

But must first observe, that his Notion of the Administration, where he contends that it must always be under the Authority of the King from whose Hands it is removed, is of the like kind with the Notion of Dr. Fern, Dr. Hicks, and others of that Stamp, in their Distinction between the Power of a Prince, which they take to be not only Absolute, but enjoy'd in an Absolute manner, and the Exercise of that Power.

It must be agreed, that Absolute Power is not to be controul'd, and yet 'tis obvious, that it may be communicated to one, or more, under Restrictions, and those Restrictions tho' they cannot mingle with the Power, are so involy'd in the manner of enjoying it, that 'tis no otherwise in the Person but with those Restrictions, and limited to such an Exercise.

On the other side, as they ever beg the Question, and make the Person the Power, or will have the Power to be entirely and absolutely in the Person; they know of no Limitations, but what are Concessions of a single Person, and as they proceeded wholly from his Will, depend upon, and are controulable by it.

Dr. Fern, from whom Dr. Hicks and others copy, says, ' If a Monarch limit himself to a Rule, reserving Power to vary from it when he shall see good Cause, he may thus stint himself in the Exercise of his Power, and yet remain Absolute.'

Further, he condemns the Author of a Treatise of mix'd Monarchy for supposing, ' That such a Monarch must be radically, that is, originally invested with such a measure of Limited Power, and that he must have his Bounds or Limits of Power *ab externo*, and not

' not from the free determination of his own
' Will.

What is a Fundamental Constitution, 'tis cer-
tain, does not depend upon the free Determina-
tion of the Will of the Prince, this may and
doe's 'in England' limit the Power *ab externo*,
and those Limitations according to the plain
meaning both of St. Paul, and St. Peter, are to be
obey'd for the Lord's sake: upon which account
they become God's *Ouodinance*.

Thus an English Monarch is of God's making,
but a *Monarch with Dr. Hick's Imperial Power*,
or *Dr. Fern's Uncontrollable Will and Pleasure*,
is not to be found on this side France.

But to return to Sir Thomas Craig, how
much soever he in his Altitudes agrees with these
Advocates for Tyranny, he would have Scotland
exempted from the Contagion. Indeed, he
hardly anywhere goes to their heights: for
where he seems most to restrain the Power of
the State, he allows there are Cases in which
they may, for a time, take the Administration
from the King: Whereas according to them, it
can't be rightfully without his Consent.

And whatever Shew of Reading Sir Thomas
may make, to prove that a King may in no Case
be wholly Divested of the Government, he
shews 'twas not his settled Judgment: for he
says,

' Sometimes there may be a Case in which a F. 202.
' King may deservedly be disown'd, as if he
make a Free and Independent Kingdom to
hold of another, as John Balio made the King-
dom of Scotland subject to England; for which
Deed he was renounced by his Subjects.

Here

Here the Case is alter'd, the People have taken to themselves a Power to judge their King for this matter; and Sir Thomas Craig says, it has been deservedly.

If, therefore, they who obstinately stand out against the present Government had any shame, they would not urge such an infallible Authority, according to which the late King James was deservedly disown'd, and renounced, for endeavouring to subject England to the former Usurpations of the See of Rome; from which it had been free for no small time.

C H A P. XXXV.

Of the Law of Succession to the Crown. The Heads undertaken.

I. How it stood in the Saxon Times.

Having demonstrated, That they who produce Sir Thomas Craig, to Colour their holding off from this Government, must renounce him; and that notwithstanding his Flourishes about the Law of God, of Nature, and of Nations, nothing but the Law of England can settle Mens Judgments of the Nature of the English Monarchy; and that this must be according to the manner in which Kings have been Seiz'd of the Inheritance of the Crown; I shall shew

i. What Right Seizin transferred to Heirs; and who were Heirs of this truly Hereditary Monarchy, according to the known Law, or receiv'd Rule in the Saxon Times.

a. That

2. That the Succession of *W. I.* was according to that Rule, and without Colour of Conquest of the Kingdom.

3. That the old *Saxon* Fundamental Law of Succession has been continu'd downwards to this Day.

4. That the Succession to the Imperial Crown of *England*, carries that of *Scotland* with it by a Right more truly Divine and Unalterable, than that by which the Kings of *Scotland* have succeeded in that Kingdom.

1. In order to manifest the Law of Succession, I shall as briefly as I can, give a faithful Abstract of what will appear to any Man who shall, with me, carefully compare Records, Histories, Law-Books, Charters, and Authentick Writers, from before the Fixation of the *Saxon* Monarchy, downwards.

Early in the *British Times*, as has appear'd from *Gildas*, no regard was had to any Royal Family; but they chose their Kings upon the like Inducements, with what made Sir *Thomas Craig's* first King, *Nimrod*.

The most ancient uncontested Authority of the *Saxon Times*, which is allow'd us even by the *Scotch* Writers, who have not been acquainted with our *Saxon Chronicle*, is the Venerable *Bede*, who dy'd in the Year 735. He (e) speaking of the coming of the *Picts* into the Northern Parts of *Britain*, says, The *Scotch* gave them Wives, on Condition, that upon any dispute of Title they should chuse themselves a King of the Female Stock of Kings, rather than of the Male. Whereby it appears what was his Judgment of the Succession, where they have seem'd most fond of an inherent Right of Birth.

(e.) *Bede.*
Lib. 1. cap. 1.
Ubi res ve-
niret in Du-
biuum magis
de lecminea
regum pro-
fapia quam
de masculina
Sibi elige-
rent.

But

But as to *England*, where a King has left
 three Sons (b) Bede calls them all *Heirs*.

(b) Lib. 5.
c. 24. an. 730.

Accordingly, he more than once mentions
 Brothers Reigning together, as (c) Sigibald
 and Frede among the *East Saxons*, while (d)
 the *West Saxon* Kingdom was Govern'd by se-
 veral (d) petty Kings, in distinct Divisions.
 These Kings at that time were Tributary, or
 feudatory Kings, under the *British* Monarch,
 who seem'd then to reside in the *Mercian* King-
 dom. In the Year (e) 730. I find King Atil-
 balt, mention'd above, styles himself not only
 King of the *Mercians*, but also of all the Coun-
 tries which by the general Names are call'd
South Angles, subscribing King of *Britain*. And
 the same Year I find an *Offa*, who styles him-
 self King of the *Mercians*, and also the other
 Nations wherever round about.

(f) Bede
Lib. 4. c. 26.
Cirencester An.
685. per ali-
quod spati-
um Reges du-
bii vel ex-
terni disper-
didierunt, do-
nec legitimi-
mus Rex Vi-
tus, &c.

By reason of the Inheritance of the Crowns
 belonging to several Sons of Kings, the Kings
 were so numerous, that Bede mentions two Bro-
 thers Crown'd Kings even of the Isle of *Wight*.
 But when any were Constituted Kings, to the
 setting aside all the *Regnant Family* of that parti-
 cular Kingdom, the Persons so Constituted were,
 according to (f) Bede, Strangers, or Doubtful,
 by way of Distinction from *Lawful Kings*.
 And yet all the Kings of the several Kingdoms
 were descended from *Woden*, from which com-
 mon Stock they all took their Qualifications for
 an *Election*; as afterwards the *West Saxon* Kings
 did from *Cerdic*, then from *Ina*; and after that
 from *Egbert*. But generally, I take it, regard
 was had to that Part, or Branch, of *Woden's Fa-*
mily, which was the *Regnant Family* within that
 particular Kingdom, where one of that Branch
 was

was advanc'd, according to that Charter of an
Off'fice, where he is styl'd (a) King of the Mercians,
Descended from the Mercian Royal Stock.

(a) Mon.
1. vol. f. 28.
An. 764. col. b.
vol. 1. An.
762. 1b. vol. a.
alt. edit.

About which time I find two Kings (b) of Kent, *Sigered* and *Eadberth*, Governing in
severalty. These 'tis likely were Brothers, but
Eadberth, who became King of all Kent, upon
Sigered's Death, or Abmission, was (c) constituted
King and Prince by the whole Country. This

(a) Cart.
Orig. in Bib.
Col.

was above 60 Years before the Foundation of the
Saxon Monarchy was lay'd, (b.) by the West
Saxon King *Ino*. Tho' most of the Moderns, and
many of the Ancients, lay it as late as *Egbert's*
time; the Confessor's Laws received and Sworn
to by W. the first, and following Kings, say of
Ina (c.) he was Elected King throughout Eng-

(b) An. 699.
(c) Leges
Sti Edw.
Limborch
& Bib. Cor.
sub. effig.
Claud D.

His qualification for an Election the Saxon
(d) Chronicle places in a descent from *Cerdic*. But
(e) Malmbury assures us, he was advanced, rather
for his Merit, than his being of the Success-
ive or Inheritable Family; and that from him (f)
to *Bridic*, the Kings were far removed from the
Royal Line. That *Bridic* was truly Elected,
appears not only in his bare Qualification, from
the (g) Stock of *Cerdic*; but as he was imme-
diately Successor to *Kenwolf*, (h) elected upon the
like Qualifications, and in whose Reign it was
(i) Ordain'd, in a National and Legantine Coun-
cil, that no Man suffer the assent of wicked Men
to prevail, but that Kings be lawfully Elected by
the Priests and Elders of the People.

(d) Cron.
Sax. nuper ed
cujus profa-
pia oriunda
est Cerdico.
(e) Malms.
f. 7. quan
successivæ
sobolis pro-
apia.

(f) Non
parum linea
regie stirpis
exorbitave-
runt.

(g) Cron.
Sax. p. 16. &c

17. (h) Brom-
ton Col. 770.
Superpopu-
lum & reg-
num elec-
rant.

(i) Spelm.
conc. 1. vol.
f. 291. 292.
Concil. Ca-
churhensis le-
gantium
& panangli-
cum An. 787.

Where 'tis manifest, that [Lawfully] does
not limit the Election to any other Rule, than
what follows in that Law, viz. to avoid Elect-

ing Persons born in *Adultery* or *Incest*: the Person
 (b) *Heres patris.* *Lawfully Elected*, is there called *Heir* (b) of the
Country: where [Heir] is plainly us'd in the sense
 both of the (c) civil, and of our (d) *Common Law*, for the Person that comes duly to the In-
 heritance: In this Sense all of the Royal Family
 (d) *Bra-
 ton L. a. c. 29* that have been *Elected Kings*, have been held to
 Succeed by *Hereditary Rights*.

And thus in Numbers of Charters in the
Saxon Times, and after, private Inheritances are
 granted to Men, to leave to what Heir they
 please, to the Church and its *Sacred Heirs*; and
 to the Barons or Citizens of *London*, and their
 Heirs.

To *Brictic* the first West-Saxon King, after the
 (e) *An. 800 vel potius 801.* People's Right to *Elect*, had been declared by
 National Authority, (e) Succeeded *Egbert*, who
 derived after several degrees passed, from *Ingil-
 Ina's Brother.*

It may well be thought that *Egbert* was *Elected*
 with a consent no less full and Formal, than
 was held Essential to his grants of Lands, one of
 which was (f) *With the licence and consent of all*
his Nation, and the Unanimity of all the Great Men.
Egbert was alive in the Year 838, tho' Historians
 generally supposed him to have died two Years
 before. His Son *Ethelstan* the eldest, and *E-
 thelwolf*, were Kings in the Father's Life time:
 As I might prove by several Charters, but
 shall here mention but two; one in the Year
 (f) 827. where an *Ethelstan* Subscribes as Mo-
 narch of all Britain; (g) another *An. 836* where
Egbert grants with the consent of his Son *Ethel-
 wolf*, King of Kent.

(b) *Ovid Ecches. cant inter decem Script. col. 220.*
 In the Year (i) 838 *Ethelwolf* Succeeded *Egbert*
 in the Kingdom of West Saxony, by a manifest
 Election.

(i) *Bib. Cor. Julius D. 2. l. 183.*

Election, his Eldest Brother *Ethelstan* being alive, and continuing the Monarch of all Britain.

Besides the Evidences above, that there was not at that time such a fix'd Rule of Descent in the West-Saxon Royal Family, as made the King's Eldest Son to be King, or to have a certain or indefensible Right to be King, may appear by the Law or Custom of that Kingdom, mention'd by (a) *Affer*, and (b) *Nicholas of Gloster*, and others; *not to suffer the King's Wife to be call'd Queen, or to sit near her Husband*: Which seems to have occasion'd the Ritual for the Consecrating the Wife in *Consortium regalis thori*, for the Consortship of the Royal Bed. Till she was so Consecrated, which was to be in a Convention of the States, or coming from it, she had no more right to the King's Bed than a Concubine.

(a) *VidCart.*
Orig. in Bib.
Cot. cod. 22.
Egbert and
Ethelwolf
acting toga-
ther, both
Kings.

(b) *Mou.*
i. vol. f. 195.
An. 845.
wedding cal-
le Britone.

Of this doubtless *W. I.* was aware, when he * exprest'd a desire to have his Wife Crown'd with him. Certain it is, that the Sons of Kings begotten on Concubines, after that they had been Adopted, or Elected by the States, or with their Consent, were always held to have succeeded as Rightfully, and to have been as Legitimate Heirs, as the Son begotten in Wedlock; the Mother's being Queen, and by consequence the Legitimation of the Issue, and Capacity to inherit the Crown, having depended upon the Will of the States.

* *Affer*
Men ending
with the life
of King Al-
fred. f. 256.

That in *Ethelwolf's* time, the Word *Elected* was duly apply'd to English Kings, and upon what Qualification, may farther appear by an Author of the Saxon time, who speaking of *Eastengle*, where St. Edmund was Crown'd King, (a) two or three Years before Ethelwolf's Death, says, (b) Over this Province Reign'd the most holy

(a) *Nic.*
Gloc. in Bib.
Cot. Caligu-
la A. ending
with the life
of Ethelwolf.
(b) *Ritu-
le* in Bib. Cot.
Coronat R-
thelradi &
H. i.

(d) Ex an-
tig. Sax No-
bili profapia
oriuadus,
&c. omnium
Compro-
vincialium
exgeneis
successione.

holy Eadmund, Descended from the Noble Stock
of the ancient Saxons, &c. who coming from
Kings his Ancestors, being eminent for his Virtue,
with the unanimous Favour of all the People
of the Province, is not so much Elected, by
reason of the Succession, or Inheritance of the
Stock, as he is forced to Reign over them.

(e) Affer.
Men.

Within this time Ethelwald, Ethelwolf's Elder
Son Reign'd in his Father's Life-time, and re-
tain'd West-Saxony to his Share, whilst the Bi-
gotted Father, having (a) withdrawn to Rome, tho'
Animo Revertendi, was held to have Abdicated,
and with much ado prevail'd with his Son, and
the People, to let him be an *Underling King*, of
an Inferior Kingdom.

(b) Cron.
De mailros.
(c) Brad-
les introd.
f. 359.

(d) Affer
epistolabore-
ditaria immo-
no commen-
da rotoria.

Befides other Objections to any Right of De-

scend from him, according to good (b) Auth-
ority his Elder Brother Ethelstan surviv'd : how-
ever one or more Acts of Parliament in his Life-
time, had provided for three Successions after
him, as appears by the Will of his Fourth Son
Alfred, made in the Presence, and with the Con-
sent, of all West-Saxony.

(e) Append.
vite Alfredi.

(f) Ita
hereditas E-
thelwolli
Rs. patris mei
ad me devo-
luta est, per-
cartam inde
confectam in
concilio no-
stro apud
Langedene.

(g) Ethel-
werdi Cron.
f. 479. Ordin-
atis sunt filii
eius, &c.

(h) Cron.
de Mailros.
143.

That Will recites what (c) Dr. Brady calls
Ethelwolf's Will ; but was (d) a Charter pass'd in
a (e) general Council, for Alfred is express'd
that the Inheritance of King Ethelwolf came to
him by Charter thereof, made (f) in a general
Council at Langedene. Yet that Charter was
but recommendatory to a future Election ; for E-
thelbert, who is not nam'd in Alfred's Account
of that Settlement, was upon the Father's
Death (g) Ordain'd King of several Kingdoms,
and succeeded his Uncle Ethelstan in (h) Kent.

Alfred's Will shews, that by the Parliamenta-
ry Settlement of the Crown, he was to be Part-

ner

ner in Power, when his Brother *Ethered* should succeed : (a) For which, he appeals to the Testimony of all *West-Saxony*. Accordingly they are both represented (b) as Kings at the same time.

(a) & Ap-
pend. Sup.

Alfred was *Ethelwolf's* Fourth Son ; which soever therefore of his three Brothers left Sons, every one of them, according to the vulgar Nation, had Right to the Crown before him ; and yet that great and good Prince, in the last publick A&t of his Life, expresses a satisfaction in that *Inheritance*, which (c) *God and the Princes, with the Elders of the People, mercifully and bountifully gave him*.

(b) Poly-
cron R. Hig-
doe. f. 355.
S. Dun. L
125. 126. An.
872.

That Will shews, that he had two Nephews then alive, *Athelm* and *Ethelbalt*, who were not regarded in the Succession ; but (d) *Alfred* was upon his Brother *Ethered's* Death, *Elected* by all who were not under the Danes.

(c) Ap-
pend. Sup. de
hereditate
quam Deus
ac principes
cum Seniori-
bus populi
Misericordi-
ter ac benign-
e de derunt

(d) S. Dun.
Ad Ducibus
&c. Prefulibus
totius gentis
eligitur &
non Solum
ab ipso ver-
rum etiam ab
omni populo
adoratur ut
eis praeset.

(e) Afferit
Annales &
Hunting.

(f) Vid. his
Book dedi-
cated to
Maud Wife
to the Duke
of Flanders
M. S. in Bib.
Cot. Et Edw.
&c. ipse
stem mate
Regali & pri-
matis electus

To *Alfred* succeeded his Son *Edward* by a manifest Election, having Cousin Germans of at least an elder House : (b) *Ethelbald* or *Ethelwolf*, who was one of them, was a Competitor with *Edward*, and was *Elected* by the Danes.

Ethelwerd, who himself Descended from *Ethered's* Elder House, says of *Edward* (e) Indeed the then Successour of the Monarchy, *Edward*, Son of the above-mention'd King, is Crowned after him, he being of the Royal Stem, was *Elected* by the Nobility at Whitsuntide ; One hundred Years being pass'd since his Ancestor *Egbert* had his present Dominion.

Where the right of the Regnant Family was laid in Prescription : But the preference of one Person before others in Election upon a Qualification from the Royal Stem.

Edwad's

(d) Mat.
West. f. 130.
Seldens notes
upon poly-
olb. f. 211. &
Ms. Lelandi
& Windover
Ms. in Bib.

Cot. So a-
greed by Sir
S. C. f. 220.
the necessity
of War with
the Danes,
forced them
to it.

(e) Croni-
cle Sax. p. 11.
Huntingdon f.
204. electus
est rex in
Merce. A.D.
944.

(f) Bib. Cot.
Vitell. D. 15.
vita S. Dun-
stanti autore
OsbernoDo-
rob. edit. in
ter Script.
sub Nomine
Anglie sacra
succedit in Ju-
re fratris.

(g) B. b. Cot.
Cleopat. B. 13
alter auter
vitelliti Dun-
stani. Max
proximus
heres Eadred-
sus.

Edward's Son and Successor Athelstan was a Bastard, (d) tho' Dr. Brady would have the contrary believed from Malmesbury's tenderness in the matter; least it should diminish that King's Glory.

The *Saxon(e) Chronicle* mentioning the Father's Death in *Mercia*, says, *Ethelstan* was elected by the *Mercians*.

Huntington says, in *Mercia*: whether they might have flock'd from other Kingdoms.

To *Athelstan* Succeeded his Father's eldest lawfully begotten Son, *Edmund*.

Tho' *Edmund* had Sons, *Eadred* (f) his Brother Succeeded: And that as an Author to those times affirms, in the right of a Brother.

And an Author of like Antiquity, whose Words are Transcribed by Authors since the reputed conquest, says, *The next Heir Eadred took upon him the Natural, or Hereditary Kingdom, by Succeeding his Brother*: where the Uncle is plainly accounted the *next Heir* fit to Reign.

And yet the *Enquirer*, and Dr. Brady, suppose, that *Eadred* was only *Tutor*, *Curator*, *Regent*, or *Protector*, of the Young Princes, and Kingdom.

Which was far from the meaning of that Ancient Authour, who blames *Eadwig* the eldest of those Princes, for pretending to Succeed his Uncle (g) before he had been *Elected*: tho' both with *Clergy* and *Lairty*, one *Elected* supplied the Numbers and Names of the Kings: That is, no Man was accounted King, who was not *Elected*; Speaks of the day of the *common Election*; what Authority the States exercised over him for his egregious folly on that day; and his being cast off by the Northern part of the Nation, because

(a) because he foolishly Administred the Government committed to, or entrusted with him.

He being forsaken by an (b) Universal Conspiracy or Agreement, they, says that Authour, the Lord so dictating, Elected his Brother Edgar.

After Eadwig's Death, the same Authour says, Edgar (c) took his Kingdom upon him, being Elected by the People of both Kingdoms, as equal Heir to both.

As an other (d) Authour has it, he was Elected by all the People of England.

To Edgar Succeeded his eldest Son Edward the Martyr, who what ever many of the Moderns, and some of the Ancients may have thought, was undoubtedly a Bastard: Which is not only shewn by an (e) Authour of the time; but is confirm'd by the Brother Ethelred's Charter: Which informs us that the Election of the States preferred his Brother; as the Charter has it,

(f) *The Great Men of both Orders Elected my Brother King; and gave me Livery of the Lands belonging to the Kings Sons:* Which plainly proves that Edward was a Bastard, the private inheritance having fallen to the Father's Younger Son: However, this is an undeniable Precedent of an Election: and yet, for the reason above, it may well be said that Edward was left (g) Heir of his Father's Kingdoms, as well as Virtue: which Historians, since the time of W. i. transcrib'd from one of the Writers of St. Dunstan's Life.

That Ethelred, who (b) Succeeded the Martyr was truly Elected, appears beyond contradiction by the (i) Ritual of his Coronation; which re-

(a) Queriam in Commisso regimine insipenter egit.

(b) Ib. hoc, ita omnium conspiratione relecto, elegere sibi Do. dictante &c.

(c) Ib. & cognitum ipsius velut sequus haeres ab utroq; populo electus.

(d) Bib. Cot. Vitellius t. 20.

(e) Osber-
nus Sup.

(f) Omnes utriusq; ordi-
nii Optimates ad regni
Gubernacula moderan-
da fratrem
meum Ea-
duardum
elegerunt
mihiq; ter-
ras ad s. gi-
os pertinen-
tes filios in
meos usus
tradiderunt.
vid. Dr. Bra-
dy's use of
this Introd. f.
360.

(g) Bib. Cot.
Regist. Mag
Claustrum

Abdoniae sub effig. Claudio. f. 82. (h) An. 979. (i) Bib. Cot. sub Effig. Claudio
Ab Episcopis & plebe electus.

(a) lb. v.
lumus &c
concedimus the Plebs or Commonalty, take his Coronation
(b) Benedic Oath: after the Oath taken, the People are so-
Dominus hunc
pure electi.
Principem,
Sir Tho. of the
Success. i. v.

(c) Domi-
tian. A. 8.
Sup. Firma-
tum est pa-
etum inter
Regem & this custom, one of his Nonjuring Editors finding
populum su-
um & firma
amicitia: jure
jurando eti-
am Statu-
tum est ut
nunquam
amplius esset
Rex Danus
in Anglia.
(d) An. 1015.
or 1016.

(e) Knigh-
ton. f. 232. v.
Misit clame-
num, &c.

(f) Malm.
b. 139. Dani
Cautionem
eligit.

(g) Inter al.
Vid. Angl.
Saxr. Hist.
Maj. Winton
Cujusdam
ducis fil. no-
mine Alui-
vam accep-
ti Concubi-
nam, ex qua
genuit filiu-
lum Ed-
mundum I-
ronside. Et
Bib. Cot.
Cleop. B. 13.
De modo &
seminibus.
R. Angl. isto
Etat Britan-
iae.

To this time the Danes possessed great part of
England, and Swane, King of Denmark, land-
ing with an additional Force: this with Ethelred
floth and unacceptableness to his own People
drove him to an Abdication.

Upon Swane's Death, the English invited back
the Abdicated King, (e) on Condition he would
Govern better than he had done: For which his
Son Edward undertook Ethelred returning, as an
Authorour who lived about the time has it, a con-
tract was Establish'd between the King and Peo-
ple, and firm Friendship; and it was repeated
with an Oath, that there never more should be a
Danish King in England.

After (d) this Cnute the Son of Swane laid
claim to the Crown of England as a Saxon, as
well as deriving from King (e) Ethelred; who
doubtless was the Son of an Elder Brother of
King Alfred, who opposed Edward the Elder.
Notwithstanding this, tho' (f) the Danes
Elected Cnute, the English adhered to Ethelred
Upon whose Death they chose his Son Edmund
Ironside, who, as appears by the Stream of an-
cient Authorities, (g) was a Bastard.

Upon

Upon
King of
cording
be Faith
Subjects.

At Cnu
was a
destitute
Widow
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(e) H
(f) v

Upon * Edmund's Death, Cnute was Crown'd King of England by the Election of all; and according to Florence of Worcester, he Swore to be Faithful Lord, as the People did to be Liege Subjects.

At Cnute's Death, his two Sons, Harold, (a) who was a Bastard, or rather Spurious, and Hardecnute his Legitimate Son by Emma, Ethelred's Widow, were by (b) Leofric and all the Nobility on the North-side of the River Thames, Elected Kings over all England, as Partners in Power, and Co-heirs; but Duke Godwin and other Noblemen in West-Saxony opposed, and prevail'd.

It appears by an Author, who writ in the Confessor's time, and whose Words are transcrib'd by several that they prevail'd for the total Rejection of Hardecnute; (c) Because he made not sufficient haste to take the Administration upon him. Therefore Harold (who, however would have been Ring of Mercia, and the Northumbrian Kingdom) was Elected over all England, by the Princes, and all the People: Or, as another of like Antiquity has it; (d) Is Elected King by all the People of England. Upon Harold's Death, and not before, Hardecnute was received; in what manner appears by the standing Ritual for the Coronation of Kings,

But Emma's Sons by Ethelred, Alured and Edward, as Malmsbury observes, were despis'd almost by all; rather through the remembrance of their Father's Sloathfulness, than by reason of the Power of the Danes. Yet they two without preference of one before the other, were accounted (e) Heirs of the Kingdom; and accordingly Cnute, (f) while in fear of the then Duke of Normandy, offeir'd (g) Geemt.

* Cited Speciman's Glos.
f. 277.

(a) Ingul-
fns. f. 58.
(b) Leofric
Comes & tota
Nobilitas
ex parte A-
quilonis flu-
minis Tam-
pice elegerunt
Haroldum
& Harde-
cnute fia
trem ejus,
etc.

(c) Blb. Cot.
Abbrev.
Cron. fin.
temp. Edw.
Coni. vid.
etiam ib.
Cheop. A. 7.
Cron. breve
ad An. 1064.
Haraldus
Rex eligitur
ab omni po-
pulo Angl.

(d) Malm.

(e) Vid.
Scrip. Nor.
Encomium
Emmae Reg-
no heredita-
tis vestra
privamini.

(f) Geemt.

f. 271.

(a) M. S. cited Mon. 1 Vol. Regnicura Regi-
nae assensu & magnatum consilio Com-
miti Godwi-
no committi-
tur donec qui dignus eset eligere-
tur & Bib. Cot. Domit.
A. 13. Crony Wint.

(b) Gemer. f. 271. Ipse autem exi-
vit homi-
nem & Ed.
totius Reg-
ni reliquit
heredem
Malm. f.
450. Post.
Hard. fr. ip-
sius ex ma-
tre Edw.
a proceribus
Angliae in
Regem ele-
ctus, &c.

(a) Upon Hardecnute's Death, Earl Godwin was chosen Administrator, or Protector of the Kingdom; during the Vacancy, and till a fit Person should be Elected King. Godwin Summons a Convention of the States, where he nominated Edward, Ethelred's only surviving Son by Emma; whom the Saxons call'd Elgiva. After some Debates, all consented to the Ele-
ction of Edward. He being so elected, was in the sense of those Times (b) Heir of the King-
dom to the last Possessour Hardecnute, his Bro-
ther by the half Blood.

And yet 'tis observable, that (c) according to a Charter of Edward's passed in Parliament, at the latter end of his Reign, the Hereditary Suc-
cession was hazarded by the Danes; that is, ac-
cording to what I before observ'd, the Anglo-Sax-
on Regnant Branch of the Royal Family was kept
back, and was likely never to have been re-
stored.

'Tis evident that it was not for Edward to car-
ry this Point farther; for besides the Danish Royal Family, claiming from King Ethelbald; and (d) Fretherick Abbot of St. Albans in his time, coming from the Ancient Saxons and Danes, and lineally descended from King Cnut; in all probability, there were several Descen-
dants either from Ethelstan, Ethelwolf's Elder Bro-
ther, or from Ethelwolf's Sons, Ethelbald and Ethel-
bert, or from the (e) Historian Ethelwerd. What
was the known Law of the Confessour's time, both
as to the Succession, and the continuing King,
besides the former Evidences, appears beyond
contradiction from that King's Laws; according
to which,

(d) Mat. Par.
edit. f. 4.
Ethelwerd's
Hist. menti-
oning Ethel-
red Meus
Atavus.

i. The

1. The (a) Monarchy was founded in a sort <sup>(a) Vid. Sup
of Ina.</sup> of Election, which explains in what Sense a King is there taken to be *constituted*.

2. If the King do not answer the end for which he had been constituted ; (b) *not so much as the Name of a King shall continue in him.* <sup>(b) Nec no
men Regis
in eo consta
bit.</sup>

3. It receives as a (c) Rule in all Kingdoms, and particularly here, the Judgment of Pope Zachary, encouraging the Franks to Depose their King Childerick. <sup>(c) Vid. The
Antiquity &
Justice of an
Oath of Ab
juration, p.
90. & 91.</sup>

With Edward the Confessor, and the Saxon and Danish Successions of Kings: Harold, the Son of Earl Godwin never was King, nor so reputed by any but his own Party,

Here I may observe :

1. That tho' the whole Scope of Sir Thomas Craig's Book of Succession, is to induce a belief that the Crown of England goes to the first in the Royal Line, by an immutable Law of Succession, Essential and Fundamental to the Monarchy; and will have it that by this Law, the Right of the Crown of England long since belong'd to the Royal Family of Scotland. (d) from the Sister of Edgar Atheling, who was never <sup>(d) Of the
Succession.
f. 164.</sup> feiz'd; bating Sir Thomas's great contempt of our Antiquities I have no material Dispute here with him, who not only shews it enough to derive from much later Seisin, but gives up all that he would seem to urge, upon the imagin'd Fundamental Law of the Hereditary Monarchy; for these are his own Words :

(e) *The truth is, during the time of the English Saxons, the Form of the Monarchy was not well fix'd, nor is the History of it very certain, or to be depended upon.* ^{(e) F. 220.}

Introd. s.
363.

2. Dr. Brady, who gives a much better face to wrong Notions, is mightily mistaken in his Assertion, that the Saxons did in their Subjection, owning of, and Submission to their Princes, acknowledge both Proximity of Blood, and Nomination of their Princes, often both, sometimes only one of them; but never follow'd any other Rule.

3. The chief Rule of Succession, upon the Death, or Disability of any King, was a proper Election, of worthy Persons of the Regnant Branch of the Royal Family.

Introd. s.
364.

4. Dr. Brady's Notion, that *Elegerunt*, signifies no more than *recognoverunt*, they acknowledged, own'd, submitted unto him as their King, is by no means true; the Recognition being manifestly Subsequent to, or in Consequence of the Election. Nor is any thing more plain

(a) Sup.
(b) Bib. Cot.
Claud. b. 6.
Reg. mag-
num Abend.
c. 50. An.
931. Patriz
Procuratori-
bus. Vid.
Rot. Parl.
17. E. 3. P.
1. m. 20. d.
a Petition in
parl. from
the Borough
of Barnsta-
ble, setting
forth that
they had
been a Bo-
rough and
sent Mem-
bers to Parl.
ever since
King Athel-
stan's Char-
ter.

than that the States did from the beginning of the Saxon Monarchy, rightfully declare an Heir to the Kingdom, and then acknowledge his Right tho' neither next upon the Royal Line, nor presenting the next; nor yet Nominated by the Predecessor. And indeed, till a rare and noted Instance in the Case of H. 5. (on whom the Crown had before been entail'd in Parliament) no Prince was known to have been formally Recogniz'd, till he had taken the Coronation Oath.

5. If according to any good Authority of the Saxon or Danish Times, it should seem that any Man came to the Crown by the Gift of his Predecessor; it must have been made with such Solemnity as was requisite; even for the granting of Lands; as that of (a) Egbert's, above mention'd, or (b) Athelstan's in an Assembly of the

Bish

Bishops, Abbots, Dukes, or Earls, and the Procurators, or Representatives of the Country; or
 (a) another before the Plebs or Commons, or
 Edgar's (b) in the open Air, with the privity of
 the Great, or Wise Men of his whole Kingdom.

(a) Cart. Athelstan. Bib.
 Cor. Sup. tota Plebis generalitas.

(b) Cart. Antiq. in curri Lond. B.

In the Confessor's Life-time there were three Competitors for the Crown, *Edward*, *Edgar* Atheling's Father, and Son to *Edmund Ironside*; *Harold*, who was *High Steward of England*, and the most Powerful of any Man, tho' not his Father's Eldest Son; and *William*, *Duke of Normandy*, grand Nephew to *Emma*, who had been Crown'd Queen of *England*, nor was *William* under any incapacity from his *Bastardy*. Besides his Wife *Maud* was descended from a Daughter of King *Alfred*, Marry'd to *Baldwin*, Earl of *Flanders*. Upon which account, a Commentator on the (c) *Grand Customary of Normandy*, held him to be the First or Chief Heir.

(c) *Guil. de Roville, Erat Regni Anglia Primior hæres ex Matilda, &c.*

Edward, Son to *Edmund Ironside*, was at one time design'd by the *Confessor* for his Successor, if he could prevail with the Nation to consent; but that *Edward*, by dying before the *Confessor*, his Son, being a minor, seems never then to have been thought of.

Harold's Design was covett; nor do's he appear to have been a Pretender, till the *Confessor* lay upon his Death-Bed.

C H A P.

C H A P. XXXVII.

Of William I. *Falsly call'd the Conquerour,*
that he came to the Crown upon a Saxon
Title, and thereby continu'd the Right of
the Crown of England to the Superiority
and direct Dominion over the Kingdom
of Scotland.

That his became only the Regnant Family;
but he left no Right of Descent to the next
of his Blood.

THO' the Proofs of the Superiority of the Crown
 of England over Scotland, and the exacting
 Liege Homage from their Kings and Great Men,
 as Attorneys for the People, in the British and
 Saxon Times, is undeniable; yet 'tis suppos'd,
 that there are weighty Objections against the
 continuance of it to the Norman Race. Tho' the
 Possession of the Crown of England with the Con-
 sent and continu'd Submission of the English may
 be sufficient to satisfy any Man, who in the least at-
 tends to what I have already observ'd, yet to fol-
 low the Advice of the Wise Man, I shall answer
 these Men in their own way, that they may not
 value themselves upon such weak Objections.

The chief, which depends upon more Points
 than one is, that Edgar Atheling was next Heir
 of the Crown of England, and the King of Scots:
 Marrying his Sister, the Right of the Superiori-
 ty, and the Homage in Virtue of it, was long
 since merged, being thro' Descents from that
 Marriage fallen upon the Kings of Scotland.

Not yet to consider the Scotch Pedigree, I
 may here observe : I. That

1. That if strict regard be had to the Descent of the Crown, as of other Inheritances, the Descendants from any one of King *Alfred's* Elder Brothers, ought to have been preferred before all who derive from under him: And, as *Ethelweard*, the Historian, was great Grandson to *Ethered*, one of the Elder Brothers, I have shewn the Son of another mention'd in King *Alfred's* Will, who was set up by the *Danes* to contend for the Monarchy with *Edward the Elder*, under whom, it seems, *Cnute*, the *Dane* Claim'd. The consequence of which, according to the Notion of the Divine Right, distinguish'd from the Civil, would carry the Right of both Crowns to another Family.

2. *Edward*, the Father of *Edgar Atheling* and *Margaret*, was an *Out-law*, as all agree: Nor does it appear, that this *Out-lawry* was ever reversed; neither was it likely it should, to give colour to any fancy'd Right, in his Son, to the prejudice of the Possessors of the *English Throne*.

3. Further yet, *Edmund Ironside* their Father was himself a *Bastard*, as the best Historians are positive, and is agreed by *Sir Thomas Craig*, while others pass it over in silence, in regard of his Virtues.

This may clear the way for asserting the Right of the *Bastard of Normandy*, to the Crown of *England*, with all its Appendages. And to take in all Objections, I shall in as few Words, as well may be, shew.

1. That he stood nearer to the Throne by the Laws of *England* than *Edgar Atheling*; and his Bastardy was no material Objection against it.

2. That in regard to that relation, and his Per-

Personal Merits, he was chosen Successour by a National Consent, in the Life-time of the Confessor.

3. That he came to the Throne upon that Right, and not as a Conquerour.

4. That he was truly Elected at his Coronation.

5. That he renounc'd all Pretence to Conquest, not only by his Coronation Oath, but by several Charters.

1. Tho' it may be Objected, that if W. I. had been no Bastard, he could not, however, be thought to stand nearest the Throne, as standing in the second Degree of Consanguinity by Emma, his great Aunt, who was only Queen of England.

Yet if this were so, and that the Claim of Consanguinity with her Son Edward were not allowable, this would not be thought to weigh much, if we attend to the Law of the Kingdom, in the Saxon Times, shew'd above, which allow'd of no Rule of Descent of the Crown bately from being Born in Wedlock, but upon the account of Consanguinity, or Affinity, with Kings and Queens, who had been chosen and consecrated to the Royal Dignity; and therefore till a Woman was solemnly Crown'd Queen, she was not admitted to Bed or Board with her Husband: but from that time, as the Ritual has it, being taken in *Consortiumthori*, she became Queen Consort.

Thus the Relation of W. I. to Emma, gave him a Qualification for an Election, as being of the Royal Family.

If his Bastardy did not hinder, he must be agreed to have been of the whole Blood to Emma, the Confessor's Mother, but besides that Edgar Atheling's Father was an Out-law, Edmund

Coronat.
Ethelredi &
H. I.

mund

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Coro-
quest,
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W. i.
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mund his *Grand-father*, was but of the *half Blood* to the *Confessor*, who was the last Possessor of the Throne, and therefore *W. i.* had an allowable Claim of *Consanguinity*, not only with *Emma*, but with the Person last seiz'd of the Inheritance of the Crown, and that in the nature of Purchase, not being by a strict Rule of Descent: but where such Rule is attended to, the Inheritance must be deriv'd from the Person last seiz'd.

Vid. Little.
ton Sect. 4.

Tho' *Edmund*, the Father of *Edward the Out-law*, was a *Bastard*, yet his Possession of the Throne, I must agree, according to the Resolution, purg'd all Defects; and if his Son *Edward*, the *Out-law*, had succeeded, neither the *Bastardy* of his Father, nor his own *Outlawry*, could have been urg'd to his prejudice.

Prima H. 7.

Bastardy, 'tis certain, was not in those times accounted *Ignominious*: For if it had, *W. i.* would never have styl'd himself, *The Bastard*, as he did in one of his *Charters*: But as several of them passed in his *Parliaments*, strengthen his Title by Settlement, with *Consanguinity* to the *Confessor*; this was an effectual Legitimation, if his Possession of the Throne had not made him *Legitimate ipso facto*.

It must be agreed, that according to the *common Law, in relation to all Inheritances, his Dying seiz'd, was an absolute barr to all Lineal and Collateral Heirs of the *Saxon Royal Family*, of which, as the Resolute Monk *Guitmond* told him, There were many besides *Edgar Atheling*, at his Accession to the Throne.

And I find a Charter of the *Confessor's*, sub-
your upon *Arelita*, from whom perhaps came our Name of *Harlor*, &c. read *Hearter's Tract de Libera homini nativitate*, where you shall find a kind of Legitimation of that now disgracefull Name of *Bastard*, which in more ancient Times was an approv'd Title, inserted in the Style of great and most honourable Princes.

* Vid. 1.
Inst. F. 234.
Vid. Sel-
den's Notes
on Poly-olbi-
on. F. 74.
Obj. Not;
that Duke
Robert got
the Conque-
rour

scribed

scribed, among others, by *Robert Regis Consanguineus*, the King's Cousin, and *Esbren* another.

2. As Duke *Wm.* was in *England* in the Year 1051, that by the Year 1057, or 1058, the Crown was settled upon him with a true National Consent, may appear to any Body, who will impartially weigh the Expressions of the ancient Historians.

To prove that he was *Elected* in the *Confessor's* Reign, it may be sufficient to cite 3 Authors of great weight, *Ingulph*, *Pitavienensis* and *Ordericus Vitalis*, who is most particular in what relates to that great Prince, next to *Pitavienensis*, whom *Orderic* follow'd as far as *Pitavienensis* went.

Jug. R. 68. *Ingulph* says, the *Confessor*

*Ad cognatum suum
Willielmum Comitem
Normaniæ animum ap-
plicavit, Eum sibi suc-
cedere in regnum voce
stabilis sancivit.*

' Apply'd his Mind
to his Kinsman *Wm.*
' Earl of Normandy,
' and with a stately Voice
' ordain'd or appoint-
' ed, that he should suc-
' ceed him.

He further says,
*Rex Edw. Rob. Arch.
Cant. Legatum a Latere
suo direxit, illum designa-
tum sui regni suc-
cessorem, tam debito co-
gnationis, quam merito
virtutis sue Archipræ-
fus relatu insinua-
vit.*

' King Edward sent
' Robert, Arch-Bp. of
' Canterbury, his Em-
' bassadour, and ac-
' quainted him by the
' Arch-Bp. That he
' was designed Succes-
' sor of his Kingdom,
' as well for the Right
' of his Relation, as the
' merit of his Virtue.

Many

Many of the Moderns will have it, that *Wm.*
was appointed Successour by *Edward's Will*:
But besides that it was *Vox stabilis*, a *stable Voice*,
or Declaration by Word of Mouth; and that
the *Embassy* to give that assurance was, as *Pictaviensis*
informs us, and I could prove at large
with the *Assent* of his *Great Men*; 'tis certain,
the Writers of that time never ascrib'd such Au-
thority to the Will or last Testament of a
Printe, made without Consent of his People;
Therefore it was, that one of the *Norman Wri-*
ters censures Harold as a Mad Man, for not stay-
ing to see what the Publick Election would de-
termine. But that the Appointment, as it is
imply'd in Ingulph, to have been with all Es-
entials to make it stable, was so in fact, Orde-
ticus is positive: His words are these.

Pictaviensis
F. 181.

Vesanus An-
glus, &c.

Edwardus propinquo
Suo W. D. N. Primo
per Rodbertum Cant.
Summum Pontif. postea
per eundem Heraldum
integrarum Angli regni
mandaverat concessio-
nem. Ipsumque conceden-
tibus Anglis, fecerat to-
tius juris sui heredem.

Edward sent an Em-
bassy to his Kinsman
W. Duke of Norman-
dy, first by Rodber-
Arch-bishop of Cant-
erbury, afterwards by
Harold himself, ac-
quainting him with
the entire Grant of
the Kingdom of
England. And he
had made him Heir
of all his Right, with
consent of the Eng-
lish.

Ord. Vital.
F. 492.

3.Upon the *Norman Duke's Landing*, he receiv'd
an *Herald* from the then Possessour of the *Eng-*
*lish Throne, complaining of *William's* invading*
his

Pi. 3. Ge-
sta Guil. Du-
cis Norm. Se
Regis Anglo.
E. 199.

his Country : but owning that he remembred
the Confessour had by his Will decreed, that
William should be the Heir of his Kingdom;
which he pretended to be of no force by the
Law of England, being without a general Con-
vention and Edict of the Senate and People; pas-
sing over the true question upon the *Act* of Set-
tlement.

Seldens's
Review p.
439.

Piæav. cap.
Qui genus
sum attin-
gerat.

Duke *William* returned, that his *Cosin Edward*
had constituted him *Heir* of the *Kingdom*, by
Reason of the many Benefits *Edward* and his
Brother had received of him, and his Ancestours,
and because he thought *William* to excell all
who touched or were of his Stock, and was best
able to assist him while he Lived, and Govern
the *Kingdom* when he dyed.

Sane neque id abs-
que suorum Optimatum
consensu, verum consilio
Stigandi Arch. Godewini
Comitis Lewrici, Sigardi
Comitis, qui etiam jure-
jurando confirmaverunt
quod post decepsum me
reciperent Dominum,
nec ulla tenus patarent
in vita illius patriam
hanc ullo impedimento
occupari.

Nor indeed, says
he, was it without
the Consent of his
Great Men, but by
the Advice of Arch-
Bishop Stigand, Earl
Godwin, Earl Leofric,
Earl Sigard, who al-
so confirm'd with a
solemn Oath, that
they would receive
me for Lord after his
decease, and would
not suffer any thing
to be done in his Life-
time, to hinder the
effect of this Settle-
ment of the Kingdom.

He adds, That Godwin's Son and Grandson,
were sent Hostages to assure him of this; and
afterwards

afterward *Harold* himself was sent, to confirm what his Father and the others had Sworn.

All Historians agree, that *Godwin's Son* and *Grandson* were sent into *Normandy* in the Year 1057, or 1058, as Hostages for performing what was then agreed on.

That the Succession of Duke *Wm.* was the main Point, cannot be deny'd.

If *Orderick* be excepted against, as living after the time; no Man can question the Authority of *Pictaviensis*.

He, after mentioning the Desire of the *Bishops*, and the rest of the *Summates*, or Great Men, that Duke *Wm.* would accept the *English Crown*, says of him, * Whose Children and Grand-
Children with a just Succession will Preside
over the English Land, which he Possess'd
both by Hereditary Delegation made firm by
the Oaths of the English, and the Right of
War: Being Crown'd with such Consent of
those Great Men, or rather Desire. And if
Reason, or account of Blood is required, 'tis
well known in what nearest Consanguinity he
touch'd King *Edward*, being the Son of Duke
Robert, whose Aunt *Emma*, the Sister of Ri-
chard the ad. Daughter of the 1st, was Ed-
ward's Mother.

* Pictav.
F. 206.
Hereditaria
Delegations
Sacramentis
Anglorum
firmitate.

Where tho' he Names Right of War, 'tis manifest, 'tis only in relation to the recovering the Possession, which had been Duke *William's* Right upon the Hereditary Delegation, or Settlement, confirm'd by the Oaths of the English, and by the Merit they found in one of the Saxon Royal Family.

This with all the circumstances might be prov'd at large, and that, tho' when Duke *William* ju-
stify'd

stifyed his Expedition, only the Principal Men of the English Nation, who were the Heads of the contending Parties were nam'd; to put *Harold* in mind of the time and occasion of the Settlement of the Crown, yet it had been made with a full *National consent.*

Harold notwithstanding this, and that he himself, had Sworn to maintain the *Act of Settlement*, would not quit the Possession of the Throne but with his Life.

He fell in the Battel decisive to him, but not of the fate of the Nation: and therefore the Powerfull Earls, *Edwin* and *Morcar*, who march'd slowly after *Harold*, and seem'd willing to leave him to take his chance, being far from the Opinion of a learned Prelate, that if one *Sovereign Prince Conquer* another, the Subjects thereby become *Slaves*, till they can get Terms for themselves, would not receive *William* for their King, till he had first given full assurance of his accepting those Terms, upon, or in confidence of which, he had been chosen in the Life time of the *Confessor*.

If there were any Ground for that Prelate's Opinion, who was not aware that he unluckily cited the Judicious *Pufendorf*, who determines quite contrary to his Lordship, that in such a Case a State of War continues, till the Victorious Prince, and the People whose *Sovereign* was Conquer'd, agreed upon Terms.

Yet Duke *Wm*'s Victory over *Harold* could not have gain'd *England* by Right of Conquest, as *Harold* was an Usurper, neither of the Ancient Race of Kings, nor chosen by a National Consent.

Therefore as the Lord *Coke* rightly observes, he is never in *Domesday-Book* nam'd by the Name

Vid. a Treatise entituled
God's Ways
of disposing
of King-
doms.

Name of King, but only by the Name of Earl Harold. Accordingly he leaves him out of the List of Kings.

His possession prov'd very short, not lasting above 9 Months. He was never recogniz'd by the States of the Realm, or fully submitted to by the Body of the Nation, nor did he hold any Parliament: which may be the Reason that no Charter of his is to be seen. And for Demonstration that *William* had a Title Prior to his Victory, all who fought for *Harold* against him, forfeited as Traytors.

After *Harold's* Death, as the Ancient Historians agree, Duke *Wm.* * made a League with the Earls *Edwin* and *Mercar*, and their unbroken Army, at *Berkamstead*, and not only with them, but such others as thought fit to meet, at the Council appointed to be held there.

4. Part of the League or Contract, was that he should be Crown'd, *as the manner of the English Government requires*: and an Author of that time assures us, that all the (a) Bishops and Peers of the Realm agreed with him, and desired him to accept of the Crown.

He further shews that *Wm.* was in great dispute with himself, whether he should take it or no, chiefly out of Love to his Wife *Matilda*, who he was afraid would not be admitted into Consort-ship with him.

All Authors assure us, he took the usual Coronation Oath, and the Ritual for the Coronation of the Saxon Kings, was used then, and in the time of *H. I.* with no material alteration.

The Ritual of the Norman times, seems to give the chief Authority of Election only to the

* Flor.
vigi. Fidelitatem juraverunt quibus & ipse fædus pepigit. R. dedicato Cot. 480. Bromton Col. 258. S. Dun f. 135.

(a) Piastav.
Cuncti Præfules regnique Proceres concordiam fecerunt, &c.

E e Bishops;

Bib. Cot.
sub. Effigie
Claudii A. 3.

Bishops: For whereas the Saxon Ritual speaks of the Kings rising from the Ground after the Letany

*Ab Episcopis & plebe e-
lectus,* " Being elected by the
Bishops, and the Com-

"mons or People,

The last Ritual says,
Ab Episcopis electus. " Being elected by

" the Bishops.

Yet that Ritual shews, that after the King had taken the usual Oath, one of the Bishops was to ask the People.

*Si tali Principi ac Re-
giori se subjice, reac-
tus et iustificationibus ejus obtenu-
perare, velint.* " Whether they would
subject themselves
to such a Prince and
Ruler, and obey his
Commands,

Then it was to be answer'd by the Clergy and People standing round about,

*Volumus & concedi-
mus,* " We Will and Grant.

Both the forms agree in the Prayer for their Kings, in one of which they say;

*Respic ad preces no-
stræ humilitatis super-
dunc famulum tuum illi,
quem supplici devotione
in Regem elegimus.* " Look down at
our humble Pray-
ers upon that thy
Servant, whom we
with Supplyant De-
votion

" votion have chosen
" King.

One of the Forms in another Prayer calls him Praelected King, another purely Elected. If then was the Infancy of this Kingdom, as Sir Thomas Craig supposes; and that King made the Fundamental Law of Succession, here was the Fundamental Contract upon which his Descendants were to Succeed; and the Nonjurors, who are dissatisfyed with Sir Thomas's admitting that the consent of the People us'd to be ask'd at the Coronations, must invent a new Ritual very different from that which was then followed, from no less an Authority than St. Dunstan's, in the Crowning King Ethelred at Kingston.

5. The Title which I have shewn, and not the Sword, W. i. Claim'd by in his Charters.

In one of his Charters he Stiles himself,

*Dei dispositione &
confanguinitatis hereditate, Anglor. Basileus,
Normanor. Dux & Reitor,*

By God's disposition
and the inheritance of
*Confanguinity, Emperour of the English,
and Duke, and Ruler
of the Normans.*

Rot. Cart.
I. R. a. m
I. N. 6. per.
Inspecx Do
conf. St.
Mart. Lond.

This was a Charter pass'd, if not in Parliament, at least in a great Council of Peers: for it was,

*Archiepiscoporum, Episcoporum, Ab. Comi.
& universor. Procerum meor. sacro consilio parrens.*

Paying regard to the
Sacred Counsel of the
*Archbishops, Bishops,
Abbots, and all my
Peers or Nobility.*

An. 1068. This was in the ad Year of his Reign, had been first agreed on in the King's Court held at Christmas, and confirm'd in another at Whitson-tide. The Charter order'd at Christmas, being, as it seems, Read at the Court held at Whitsontide.

Twill be material to observe, that this was at the request of the old Saxons Proprietor Ingelric, (who as appears above had large Possessions at the Survey) and to see who were the Witnesses to this Charter: They were the Queen, one of the King's Sons, the 2 Arch-bishops, *Stigand* and *Aldred*, *Robert*, the King's half Brother, the Earls, *Edwin*, and *Marchere* or *Mercar*, *Waldeof*, *Roger Montgomery*, and Princes, *Richard*, the Son of *Gislebert*, and *William Malet*.

This Prince *Malet*, and all but the King's three Relations, and *Roger Montgomery*, and *Richard*, the Son of *Gislebert*, I could shew to have been Saxons, as being here before Duke Wm's Expedition. And it may be some question, whether *Roger* was not the Son of *William*, Earl of *Hereford*, who was the Son of *Osbern the Dane*.

The like I could shew to the end of King Wm's Reign, or very near it.

In another* Charter, that King styles himself King of the English made by Hereditary Right.

^{* Mond. 1.} In another † speaking of the Confessor, 'tis
^{Vol. F. 48.}
^{Hæreditario}
^{jure factus}
^{Cart. Antiq.}
^{B. n. 4.}
^{+ Mond. 1.} In another † speaking of the Confessor, 'tis
^{Vol. F. 289.} added.

Cujus miseratione dni,
genere & dono in reg-
no sumus hæredes.

Whose Heir in the
Kingdom by God's
Mercy we are by Re-
lation, and Gift.

A Charter of his in a full Parliament, the Historian Ingulph, who was a Saxon, subscribes.

*Regallum decretorum
Notariorum.*

' Notary of the Sacred. In
Bib. Cor.
King's Decree, but
rather Register.

This was in the 15th Year of his Reign, and An. 1087.
was

*Convenientibus in u-
numcunctis Patriæ Pri-
matibus, in Nativitate
Christi.*

' In a Convention of
all the Peers or No-
bility of the Kingdom,
at Christmas.

At that there were Saxon Bishops, particularly Wulstan, Bishop of Worcester, and Osmond of Salisbury, who continu'd Bishops beyond the Survey, and not to mention others whom I could shew to be Saxon Peers, there was Henry de Ferrars.

In the Charter which then passed to the Church of Westminster, mentioning the Confessor, 'tis said,

*Qui me supernâ cle-
mentiâ bâredem sibi esse
Et ut Angliae genti re-
gendo. Præcessem adop-
tevit.*

' Who, by God's mer-
cy, adopted me his
Heir, and to prâside
in Ruling the English
Nation.

For full manifestation how W. I. came to the Crown, and what Right he acquir'd, I shall transcribe the chief part of a Charter of his to the Church of Westminster, passed as he himself says,

Consultu atque consensu Primatum meorum.

Rot. Cart.
5. E. 3. m.
19. n. 32.
pro. lb. &c
Conv.
Westm.

Ego Willm. Dei gratia Dux Normannor. per misericordiam divinam, & auxilium beatissimi Apostoli Petri, pii fætoris nostri, favente justo Dei judicio, Angliam veniens, in ore gladii regnum adeptus sum devicto Haraldo Rege cum suis complicibus qui michi regnum providentia destinatum, & beneficio concessionis Domini & cognati mei gloriosi Regis Edwardi concessum, conatis sunt auferre. Cum ergo comperisset, quod idem predecessor meus beatæ memor. præd. Rex dimisisset coronam & al. regalia regni præcipua ad Ecclesiam St. Petri Westmin. quam divinitus pro remedio animæ suæ inspiratus, in loco pænitentia antiquam redificavit, & ipse quod dicit sapientia stultum est non attendere ad quem finem tendas, & illud,

' By the advice and
' content of my Great
' Men.

' I W. by God's Grace Duke of the Normans, by the Divine Mercy, the aid of the most Blessed Apostle Peter, our Pious Patron, God's just Judgment favouring, coming into England, have obtain'd the Kingdom by the edge of the Sword, King Harold being overcome with his accomplices, who endeavour'd to take from me the Kingdom, design'd me by God's Providence, and given by Virtue of the grant of my Lord and Kinsman, the Glorious King Edward: When therefore I found that the same my Predecessour, the said King of blessed Memory, had dismiss'd the Crown, and other chief regalities of the Kingdom, to the

per mea Reges regnant
 & Principes justa de-
 cernant, & aliud, servi-
 re Deo vere regnare est;
 & quia qui ecclesiam
 Dei honorant cum illis,
 & in illa, & ex illa
 honorantur, Decreui om-
 nes omnino ecclesias. Dei
 exaltare & honorare, sed
 maxime illam in cuius
 materno utero corpus
 Domini prefat. pred. resti-
 tutus sepulturae Regine
 ut cepimus requiescent, &
 in qua ipse oleo S. Un-
 dionis primitus & co-
 rona regni adeo per pon-
 tificales manus, primo
 anno victoriae meae, ip-
 so Die Nativitatis, ce-
 lebriter coronatus sum.

Ne ergo vacuus ap-
 parerem, Antistiti Dei
 Apostolor. Petro quam
 Præducem & signife-
 rum, inveni, & ne ingra-
 tus existarem animæ be-
 nignissimi præd. Regis,
 qui me in regnum suum
 adoptivum heredem in-
 stituerat, & ut Deus
 per suam gratiam, &
 banc elemosynam, stabili-
 laret & confirmare reg-
 num, mibi & filii mei

the Church of St.
 Peter's Westminster,
 which Ancient Church,
 being Divinely in-
 spired, for the good
 of his Soul, instead of
 penance, he rebuilt.
 I also because Wis-
 dom says, 'tis Foolish
 not to attend what
 end you propose;
 and that, by me Kings
 Reign and Princes
 decree justice; and
 again, to serve God
 is truly to Reign; and
 because they who
 honour the Church
 of God are honoured
 with her, and in her,
 and from her; I have
 determin'd to Exalt
 and honour God's
 Churches everywhere
 but chiefly that, in
 whose Motherly
 Womb, we are given
 to understand, the Bo-
 dy of the above men-
 tioned said Lord, rests
 restored to royal bu-
 rial. And in which I
 was first so solemnly
 Crown'd with the
 Oyl of the holy Un-
 unction, and the Crown

& eorum heredibus.
etc.

' of the Kingdom, the
' first Year of my Vi-
' etory, on the very
' day of the *Nativity*.
' Therefore that I
' may not appear emp-
' ty handed, to the chief
' of God's Apostles,
' whom I found my
' Leader and Standard
' bearer, & that I might
' not be ungrateful to
' the Soul of the said
' most benign King, who
' instituted me adoptive
' Heir of his Kingdom;
' and that God would
' by his Grace, and
' his alms, establish
' and confirm the King-
' dom to me, and my
' Sons, and their Heirs.
&c.

Among his Grants, he gives two Beasts of his own Hunting, as often as he shall be Crown'd in that place at the Solemn Feasts, and at the Feast of St. Peter.

He confirms the Grants of a certain Citizen of London, *Alfwold Cokesfat*, and another, one *Aelfward Grossius, Gross*.

He adds,

*Hac igitur eadem ec-
cles. Winton simul &
Gloucest. concessi quia*

' Therefore I have
' granted the same
' things both to the
Churches

pred. relatione sapientum, ter in anno tribus istis & in locis majori solummodo, tam pro pacis eccles. unitate quam regni mei soliditate, debeo maxime summari corona. Itaque quoties ab expeditione aliqua sive a Normania five etiam extra Angliae limites rediero & ecclesiam pref. Westm. pro recognitione, quia mihi prima sedes regalis est & principalis visitare, ac Conventu ad processionem pro gloria & bonore suscepimus marca totius auri piam anteces. meor. devote prosecutus institutionem eccles. prelibatam remunerari concedendo devovoi Contestar, igitur filius, meos heredes scil, & omnes posteros meos, pertremend. judicium Dei, ne ipsi faciant aut ferant ullam infractionem huic mea donationi,

Churches of Winchester & of Gloster, because by the relation of the said Wise Men, thrice in a Year, and in those 3 places, as well for the unity of the Peace of the Church, as for the establishment of my Kingdom, I ought to be greatly elevated with my bigger Crown. Therefore as often as I shall return from any Expedition either from Normandy, or also from without the Bounds of England, and shall visit the Church of Westminster, for an acknowledgement, because it was my first and principal Royal Seat, being receiv'd by the Convent at a Procession with glory and honour, so often devoutly pursuing the pious institution of my Ancestors, I have granted and promis'd that the above nam'd Church shall be remunerated

' munerated with a
 ' *Mark of Gold.* There-
 ' fore I conjure my Sons,
 ' to wit, my Heirs, and
 ' all who shall come
 ' after me, by the tre-
 ' mendous Judgment of
 ' God, that they never
 ' cause, nor suffer any
 ' infraction of this my
 ' Grant.

This is full of Demonstration against the Supposition that *W. 1.* came to the Crown, or Govern'd like a *Conquerour*.

Here 'tis agreed by him and his *Wise Men*, or *Senatours* in full Parliament.

1. That his *Victory*, which was *God's Judgment* on his side, was an *Adjudication* of the *Crown* to him upon a *Prior Title*.

2. That his *Title* was an *Adoption*, or being *Declar'd Heir* in the former Reign; for which *Settlement* of the *Crown* he was qualify'd, as being related to the then *King*.

3. This being such an *Adoption* as the *Parliament* held *Valid*, the *Record* manifestly confirms the *Historians*, which shew, That it was with the *Consent* of the *English Nation*.

4. Next to that of asserting the *Right* of the *Crown* by his *Sword*, no other effect is ascrib'd to the *Victory*, than the subduing *Harold* and his *Accomplices*, who would have depriv'd *Duke Wm.* of his *Right*.

5. As there were *Saxon Citizens* of *London*, with *Surnames*, it shews how weakly all *Propri-
etors* of those *Times* have been concluded to be
Normans,

with a
d. There
my Sons,
eirs, and
ll come
the tre-
gmen't of
ey never
uffer any
this my
inst the
own, or
se Men,
udgment
rown to
or being
which
fy'd, as
Parlia-
y con-
it was
of the
uscrib'd
old and
epriv'd
London,
Propri-
to be
rmans,

Normans, or others of Foreign Birth because of their additions.

6. Normandy being annexed to the Crown of England by his being King, was distinguish'd from other Parts out of the Bounds or Jurisdiction, of England.

7. He shews his fix'd Resolution to Govern according to the ancient Law of the Kingdom, in reviving the old British Law continu'd downwards, for the King solemnly to wear his Crown thrice a Year at London, Winchester, and Gloster, at which time all the Nobility were to attend, and Justice was to be Administred to all Men, by their *Adjudication*, or *Advice*.

8. Tho' there is no Formal *Entail* of the Crown upon *Males*, there's something very like it; and a full Declaration, that the Crown should not go to King Wm's Heirs general; which it must have done if he had been held to acquire Right of the Conquest.

9. The Heirs design'd, or intended, were not they who should have a strict Right of Proximity; but as it had been in the *Saxon times*, and in the * *Civil Law*, all the Sons were accounted Heirs: And as it was to go to the Heirs of all the Sons, it could be no otherwise than as continued to the Family; and therefore whoever of Duke Wm's Descendants should come to be Declared King, would be *Heir* within the plain meaning of the Charter, declaring the Judgement of Wm. I. and his Parliament.

Sir T. C. S.
911. By the
Civil Law
Sons are all
equal in the
Succession of
the Father.

As W. I. was Declared King upon a Legal Right, he more than once receiv'd and Swore to that Body of the Common Law of England, which had obtain'd the Name of King Edward's Laws, which as has been observ'd, declare the end

end for which a King is Constituted ; and that he loses the Name, or ceases to be King, when he answers not the End.

Sir T. C. of
the Success-
ion P. M.
233.

This shews how grossly Sir Thomas Craig was out, in supposing, that the Succession to the next of Blood to King Wm. whom he calls the Conquerour, was a Fundamental Law made by him in the Infancy of the Kingdom.

Upon this Hypothesis, he triumphantly Interrogates his Adversary.

' Did the Conquerour then after that most Bloody Battel get the Kingdom, that those descended of him should not succeed to it ? Himself answers, ' Twas quite otherwise, for ' twas the Fundamental Law of the Kingdom, ' and as 'twere a kind of Sacred Covenant between the King and his People, that as long as the King shall hold his own Scepter, so long should the People enjoy their Goods and Lands ; on the other hand, that as long as that People continue in being, and breath the Common Air, they shall maintain and defend the Rights of their King and of his Children, and the Succession immutable. For it was on these Terms, that their Children should succeed, that Kings acquired Kingdoms.

As this is built upon an Acquisition or Conquest without Precedent right, it may be adapted to their Fiction of * King Fergus : but that does not in the least concern the Succession to the Crown of England, to which Wm. the 3d was admitted upon the Act of Settlement, and removing the Usurpation.

That he was content to take the Crown upon the Fundamental Terms is evident, and he thought

* K. James's
works. P.
He made
himself King
and Lord
with Irish &c
such as wil-
lingly fell to
him.

thought it enough that his was accounted the Reigning Family, but was so far from making provision for the continuing of the Crown to the next of his Blood: that the Oath of Allegiance enacted in his time, was only to his Person without mention of Heirs.

Vid. Sir G.
M's just
Right of
Monarchy.

P. 27.

Vid. Leges

W. 1.

Vid. tamen

Sir T. C. F.

139. They
bound them-
selves to be
faithful to
him and his
Heirs for
ever.

Sir T. C. F.
221.

That he had not acquired any such Right, as Sir Thomas Craig imagin'd, appears above to have been the Judgment of himself and his Parliament, and continued his settled judgment to the last: for in his Death Bed Declaration, which Sir Thomas Craig and others would set up for a well disposing of the Crown, at the same time when he owns that it was not his to give: he says,

I appoint no Heir of the Crown of England, but to the Creatour of the Universe, whose I am, and in whose Hands are all Things, I commend it, for I did not possess so great Honour by Hereditary Right, but with direful conflict, and much effusion of Blood, I took it from the Perjured King Harold, and brought it under subjection to me.

Ord. Vital.
and Selden's
Notes on Po-
tobion.

He adds,

Therefore I dare not bequeath the Scepter of this Kingdom to any body, but to God alone, lest after my Death worse troubles happen in it by my occasioning.

But my Son Wm. being always as became him obedient to me, I wish that God may give him his Favour, and that, if it please the Almighty, he may Reign after me.

According to this:

1. He did not believe he had any Right or Pretence to dispose of the Crown.

2. As

2. As he thought some, out of value for his Memory, would regard such a designation of a Successour, he apprehended, that others would be likely with Arms to assert the Latitude they had, of chusing either of his Sons.

3. That which he hoped would prevail in the Election, was the Merit of his Son Wm. for his Obedience, tho' he had not the Right of Primogeniture.

4. He held, that Providence only could determine, who should succeed: Which shews, that no Law had ascertain'd the Right of any particular Person, exclusive of all others.

5. One Reason was, that he had it not by Hereditary Right, that is, by a strict Rule of Descent of the Inheritance of the Crown. Not but that after he was Declared Heir, he had as true a Hereditary Right as any of his Predecessors; and that he had such a Right by Adoption, has appeared above.

Indeed, one of his Charters may seem to contradict his Death-bed Declaration, or the sense I have given of it, for speaking of his Victory over Harold, he says, he acquired the Kingdom due to him and his Successours, to be possessed for ever by Hereditary Right.

This might imply no more than that he was the Head of Successions, and after him, the Crown was to be enjoy'd Hereditarily, as before. But the course of his Charters, and especially that to Westminster, seems to carry it further, that his was become the Regnant Family, and the Right ought to be confin'd to descendants from him.

Sir Thomas Craig, whose common frailty 'tis to produce Arguments against himself; tho' he lays

*Cart. Antiq. in Turri
Lond. F. Et
collectanea
M. Hale mil-
li. in Biblioth.
Hosp. Linc.*

lays the stress of his Notion of the Succession upon Wm. the First's coming to the Crown of England, as a Conqueror; agrees that he renounces that Pretence in his Laws; for Sir Thomas says,

' He owns in the Laws made by himself, that he had the Crown of England by the Will and Appointment of his Cousin, Edward the Confessor.'

But does not give the Words, which evince the truth of what I have shewn above, in relation to the Dependency of Scotland, that Law speaking of Margaret, Queen of Albany, now Scotland, says,

Erat de jure post decessum Edgari Adeling, fratri sui, verus heres, ultimi Regis Edwardi, de Corona totius regni precepit. sed instinctu, & petitione, & voluntate, boni Regis Edwardi propinquai nostri, alter mutatum est, qui nobis coronam totius regni precepit. dedit; & regnum precepit nobis jurare fecit, qui per primae equitatem & justitiam probitatemque nostram novit.

' She was of Right, after the decease of Edgar Adeling, her Brother, true Heir of the last King Edward of the Crown of the whole Realm aforesaid: but by the Instigation, and Request, and Will, of good King Edward, our Kinsman, it was otherwise appointed; who gave us the Crown of the whole Realm aforesaid, and he caus'd the said Realm to Swear to us, who knew our Equity, and Justice, and Probitiy.

' But

Sir T. C.
F. 179.
Lambert
Archaios
mis & Bib.
Cot. Claudi.
12.

Princeps vero Albaniæ duxit eam in uxorem, casu fortuito.

Picti enim Albaniæ a Picto duce vocantur, Scotti vero Albaniæ a Scotto Duce nuncupantur. Est enim Albaniæ pars Monarchia regni bryns, olim vocabatur regnum Britanniæ.

' But her the Prince
of Albany hapned to
Marry.
' For the *Picts* of Al-
bany are call'd from
Pict, their Leader,
but the *Scots* of Al-
bany are call'd from
Scot their Leader. For
Albany is part of the
Monarchy of this
Kingdom, which of
old was call'd the
Kingdom of Britain.

In another part of that Law, mention is made of the *Confessour's* proposing, or purposing, that *Edgar Atheling* shoud succeed him, but fearing that *Harold*, *Tostig*, *Gurth*, *Lefwin*, and other Sons of Earl *Godwin*, would not suffer his purpose to be stably, or ratify'd, he adopted *William the Bastard*.

These Declarations in that Law, Sir *Thomas* shews he was sufficiently appriz'd of, but they are too full against him, to be any more than referred to by him: upon whose Authority all this is to import a Will or Death-bed Declaration of the *Confessour's*; but he would be sure not to touch upon the Demonstration, that all *Albany* is within the *British*, now *English Monarchy*.

As to the present Question, What sort of Gift this was, Sir *Thomas* says.

' Can any Man be so void of Reason as to be-
lieve, that so Wise a Prince as *Edward* was,
would have appointed him to be his Heir,
who by the Laws of his Country could not be
receiv'd?

receiv'd as such, when as the Conquerour was Born in France? Was Edward ignorant of the Laws of his Country? Nay, he was thoroughly acquainted with them, &c. It is not likely he would have made him his Heir, by his Will, who he knew could not be admitted, as being born out of the Kingdom.

The Law, and the Historians of the Times, remove all these Difficulties, in shewing that Duke Wm. Claim'd neither by Right of Descent, nor by any Will of the Confessour, nor yet by Conquest; but as the Law shews, the Confessour's Gift was but as Head of the Monarchy, in whose Name the Act of Settlement was made, at his instance and request; to the observing of which Act, the People of the Kingdom Swore, either in a National Assembly, or in the several Counties. And as the chief opposition to the Effect of it, was apprehended from Earl Godwin and his Sons, the Historians shew, that a Son and Grandson of his, were sent as Hostages to the Norman Duke.

Of the Right thus settled; the Clergy of that Time were so well satisfy'd, that the Abbot of St. Albans, who was thought indiscreetly to have set out the Merit and Power of the Churchmen, told King Wm. *He owed his so easy gaining Possession, to the Belief the Clergy had, that it would have been Rebellion to oppose him.*

Wats. ad-
vers. ad Mat.
Par. addita-
menta.

As he came to the Crown according to the Fundamental Constitution of the Monarchy, and took the usual Coronation Oath, he after that more than once, Swore to maintain that Body of the Common Law of England, which had obtain'd the Name of King Edward's Laws; the main Substratum of which, as has appear'd, was the British Law.

F f

That

That Law declar'd, that he ought to do all things in his Kingdom Rite, in due manner, and by the *Advice of his Peers*. It further admonishes him of the End for which he was *Constituted*, which if he did not answer, not so much as the Name of King would remain in him.

'Tis not unpleasant here to observe, That tho' Sir Thomas Craig's Scheme of an Indefensible Right of Succession to the Crown of *England*, vested in their *J. 6.* is the most plausibly founded on the supposition that *W. 1.* was an Absolute Conquerour; and indeed, 'tis impossible for the *Non-jurors* to find any other but that sandy Foundation to build upon; yet as if he went upon the no less baffled Fiction of the Patriarchal

Sir G. M^s Power, in consequence of which, Sir George Just Right.

P. 24.

4. 361.

Mackenzy holds, That as long as it is known who is the Root of the Family, or who represents it, there's no place for Election. Sir Thomas will have it, That if all things were narrowly canvass'd, *W. 1.* was an *Usurper* upon the Divine Right of Edgar Atheling, and that this has been with the Kings of *Scotland* ever since Edgar's Death; which as it is contrary to the Law of *England*, will appear to have had no more force in *Scotland*.

C H A P: XXXVIII.

*Of the State of the Succession, and Nature of
the Hereditary English Monarchy from
W. 1. to R. 2. inclusive.*

William the 2d. being thro' the prevalence of the English against the Normans, Elected soon after the Fathers Death, truly succeeded upon the *Old Hereditary Right*, with no other difference, than that the Family of W. 1. was, if it consisted with the Good of the Publick, to be preferred before any other. And indeed Wm. stood fairer for a Recognition than his Elder Brother.

Dr. Brady observes out of *Knighton*, that the Barons of England, with the plenary Consent and Counsel of all the Community of the Kingdom, branded Robert with *Illegitimacy*, because he came not from a *Lawful Bed*. No Man, I believe, has imagin'd that Robert was not the Son of W. 1. by *Maud*, and that after Marriage. But as has appear'd above, till she was Crown'd Queen of England, she was but as a *Concubine*, and her Issue *Illegitimate*, or not Legally qualify'd to succeed to the Crown.

Dr. Brady's
Introd. f.
370. Cum
plenario
consensu &
confilio toti
us commu
nitatis.

Thus the very Qualification to be *Elected*, proceeded from that *Election* which made the Wife *Queen*.

Upon this account, H. 1. was to be preferred upon the Death of W. 2. before the Eldest Brother Robert,

Sir

Sir Thomas Craig, who had an admirable Talent of innocently arguing against himself, says,

" Children who are born after their Father obtain some dignity, enjoy certain Privileges which are not common with them to the rest of the Children.

" And in England the Children of such as are Naturaliz'd; who were born before the Naturalization, are postpon'd in the Succession of their Father, to them who are born after it was obtain'd; but 'tis in such things only as he acquires in that Kingdom, of which he is made a Denizen. From all which then, 'tis evident that the Right of Succession to the Kingdom of England, did appertain to H. I. For he only of all the Conqueror's Children, was an Englishman, born in England, and when his Father was King. Now admit that H. I. had the strict Right of Descent, then

1. Wm. was not a Conqueror, and did not acquire a Right to him and his Heirs, upon which Sir Thomas's whole Fabrick is built.

For if he acquired a Right to him and his Heirs, Sir Thomas's suppos'd Law of Nature, not the Law of the Conquered Kingdom, ascertain'd his Heir.

2. If the Law of the Kingdom was to take place, then the imagin'd Disposition made by him to his Son Wm. was void. And whether there was such a Disposition or no, the very first Successor of the reputed Conqueror's Family was a Usurper.

As to H. I. whatever Title has been devised for him, to suit Modern Schemes, he himself who best knew how he came to the Crown

owns by his (a) Charter, That next to God's (a) Cart. in
Mercy, it was owing to the Common Council of Mat. Par.
the Barons.

The Ritual (b) for his Coronation shews, (b) Bib. Ger.
that he had been Elected in a Convention of the Claud. A. 3.
States; prays to God to bless him whom they De Conventu
have elected King, and declares his Authority Seaiorum
to be Delegated to him *haereditario judicio*, by &c. & Epis-
an Hereditary Judgment, or Decree, constituting copi proster-
him *Heir of the Crown*. nant se su-
per pavimen
tum hinc &
inde circa e-
lectum Re-
gem.

Till he presumed too far upon the Love of the People, and bore too hard upon 'em, they never thought of changing him for his Elder Brother: nor was his Possession long disturb'd.

He, well knowing that his Issue had no certain Right of succeeding him, till the States should agree to it, prevail'd upon 'em to make two Settlements of the Crown successively; one upon his Son *William*, another after the Son's Death upon his Daughter *Maud*. And both the Settlements were establish'd by a National Oath. But 'tis observable, that the last was if the King dy'd (c) without *Heir*, say some, without *Heir Male*, say others.

According to which, with regard to the ancient Constitution, *Stephen*, Sister's Son to *H.* the first, when Recogniz'd by the *States*, became within the express provision of that Settlement. Agreeable to this, as we (d) have it from an Author of the Time, *H.* upon his Death-bed recommended *Stephen* to be receiv'd by *Hereditary Right*. And that Author speaks of his Merits, joyn'd with his being of the Royal Stock, as inducements to his Election.

(c) An.
1116. Hem-
ingford, f.
473, Gerv.
Dorob. Col.
1337.

(d) Bib.
Cot. sub. Ef-
fig. Vespas.
A. 19. de
Monait. Eli-
ensi vel jure
Haereditario
fusciplatis
& de stirpe
regia desce-
derat.

(a) Gesta
Regis Steph.
inter script.
Norm.

As (a) another Author, has it, Because he appear'd fit to Reign, as well for the Dignity of his Stock, as the Probity of his Mind, they agreed upon a common Resolution, and all with concordant Favour, Constituted him King; a Compact being first made, and a mutual Oath, according to the vulgar expression.

(b) Malmf.
Hist. Hist.
Nov. f. 106.
Gerv. Do-
rob. Col.
2354.
(c) Brady's
Introd. f.
371. Assensu
Cleri & po-
puli in re-
gem electus.
(d) Bib.
Cor. Galba
A. 2. Inter
sermones ad
populum
Quid obsti-
natus quid
perniciotius,
Quam con-
tra voluntu-
sem omnium
regni jura
violenter ab-
ripiere.

Maud's Title, tho' under a former Settlement of the Crown, gave him no disturbance, till he either broke his part of the mutual Contract, or at least disoblig'd the Clergy: Which makes his own Brother (b) the Pope's Legate, turn against him, and help to bring in Maud; who refusing to Swear to the Confessor's Laws, was (cheifly by means of the Londoners, who were very powerful at all Elections) rejected, and never fully Recogniz'd.

At that time, Election was counted no disparagement to the King's Title: For Stephen (c) not only took into his Title, by the Grace of God, by the Assent of the Clergy and People, elected King of England; but in an (d) Assembly of the States, in a memorable Speech, too long to be here inserted, appeals to them, who ought rather to succeed in a Kingdom? One whom the unanimous Consent of the Nobility, and the universality of the People earnestly wish'd for, desired, elected, or one, whom every Sex, every Age, opposed and cryed out against? What more pernicious, than against the will of all, violently to snatch the Right of the Kingdom?

Had Stephen's Brave Son Eustace liv'd, in all probability, H. 2. had never succeeded; and however, was glad to come after Stephen as his adopted Heir, as W. 1. had been to the Conessor. Neither was * Maud's Consent ever ask'd

* Sir T. C. f. absofupposes, that Stephen had the sole Right, as the first Male.

ask'd to the Settlement, or Recognition after-
wards, tho' she liv'd beyond that time: Nor did
the States take any notice of her pretended Title,
after her manifest forfeiture, of all that she could
Claim by the Settlement in the time of H. I.

Vid. For-
med, S. m.

H. 2. knowing that the Consent of the States
was the best Title any Child of his could have
to succeed him; and yet that they had liberty of
altering a Consent, given upon Reasons, which
might afterwards fail; out of abundant care to
h. Sno Henry, had him Crown'd in his Life-time;
which thro' French Counsels, put the Son upon
insisting on the Right of Kingship, to the great
Calamity of the Nation; tho' the Subjects
Swore Allegiance to him with an express
Salvo for the Allegiance due to his Father, which,
what ever some have thought, or affirm'd, was
the only Salvo in the Scotch King's Homage, ac-
cording to ancient Custom, for the Crown of
Scotland.

To H. 2. succeeded his Eldest surviving Son, (a)
Richard, but was not accounted King upon the
Death of his Father. Authors (b) say, he was to be
(c) promoted to be King by Hereditary Right.
But as the former usage explains such Words, he
deserv'd to be elected and made King; in which
sense one of the Authors, who liv'd at the time
immediately explain'd himself, mentioning his Co-
ronation Oath after a solemn and due Election as
well of the Clergy as People.

Before, he was at first Earl of Poitou, and (d) Mat.
then Duke of Normandy, but (e) not till he Par. de An.
had been solemnly Invested with the Sword of 1188. Duca-
that Dukedom. and Bromton informs us, that tis Norm.
he accepted the Crown, upon (e) condition of gladium sus-
his keeping his Coronation Oath; without un- cepit &c. (e) Bromton
dertaking f. 1159.

dertaking which, the *Archbishop* charged him not to assume the Royal Dignity. He going to the Holy Wars after his being Crown'd, his Brother *John* would have seiz'd the Government as *Vacant*, but had no tolerable Pretence, the War being carry'd on with a *National Consent*. Upon this, it was adjudg'd by a * *Common Council* of the Kingdom, that *John* should be disseiz'd of all that he held in *England*, which might extend to such Right or Expectancy as he had in the *Crown*.

* Hoveden
de. An. 1194.
per communi-
ne consilium
Regai defi-
nitum est de
omnibus te-
nementis
suis, &c.

(a) Wend-
over Dicen-
tes judicium

esse & Con-
suetudinem
illorum te-
gionum.

(b) Cujaci-
us de feudis.
f. 519.

(c) Grand
Cust. Cap.
25. Desche-
rance.

(d) Glanv.
tract. de le-
gibus &
constitutis.

regni Angliae
lib. 7. c. 3.
Licit pre-
moriatur

patri suo
&c. nulla
dubitatio est

&c. tunc
quidem, ita
hodie obti-
net inter

avunculum
& nepotem
quia melior
est conditio

possidentis.

Notwithstanding which, upon Richard's Death, the great Question came upon the Stage, Whether the Crown ought ordinarily to go according to the Right of Proximity, or of Representation.

The Right of Proximity was in *John*, Brother to King *Richard*: Upon this Right, or Reason of State, the English Nation receiv'd *John* for King, who had the best Right when declared King; according to the (a) Custom of Normandy for Succession to that Dukedom, and as (b) *Cujacius* supposes, of most Nations, his was the best Title Prior to the Adjudication.

Foreigners were for *Arthur of Britain*, as having the Right of Representation, being the Son of *John's* Elder Brother: And this was the Right (c) according to the Custom in France.

But as to the Law of *England*, it appears by (d) *Glanvil's* account of the Law, as it was taken in the time of *H. a.* that even for the Descent of Private Inheritances, it was doubtful, whether they ought to go to the Grandson, by the Eldest Son, who dy'd in the Father's Life-time, or to his next surviving Son; If, indeed, the Eldest Son had in the Father's Life-time done *Homage* to the *Chief Lord* for his Father's Inheritance, this was held to remove the doubt. And

And
on betw
tion * of

Accor
ed Posse
and Ar
(a) being
over the
Marsha
mitted

These
Chief J
to Swea
at Nort
(b) John
Condition
what h
Earls a
all Men
lected in
(c) the
succeed
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and rea

Str
the Eng
by his N
and Jeff
land.

Not
of John
the tim
King J

And Glanvil afterwards says upon the Question between Uncle and Nephew, That the condition ^{*} of the Possessour is the better.

According to which, King John having obtained Possession of the Crown, had it Rightfully, and Arthur had no Right to turn him out. John (d) being beyond Sea at his Brother's Death, sent over the Arch-bishop of Canterbury, and the Earl Marshal of England, to sollicit for his being admitted to the Throne.

These Great Men, with the assistance of the Chief Justice of England, prevail'd upon many to Swear Allegiance to John. And in a Convention at Northampton, those Persons were Sponsors for (b) John's doing Right to all Men: Upon which Condition, or in confidence of his performing what had been undertaken in his Name, the Earls and Barons Swore Fidelity to him against all Men. Yet after this, he was formally Elected in a full Convention of the States, where (c) the Arch-bishop declares, That no Man ought to succeed another in the Kingdom upon any previous Reason, unless unanimously Elected by the whole Realm, &c. But if any of the Royal Stock was more deserving than others, his Election ought to be consented to the more promptly and readily,

Str Thomas Craig, according to his skill in the English History, supposes ^{*} John set up only by his Mother, Hubert Arch-bishop of Canterbury, and Jeffrey Fitz Peters, Chief Justice of England.

Notwithstanding what had passed in favour of John in the Convention; the [†] Arch-bishop at the time of the Coronation, calls him but Earl. King John took the Oath appointed by the Ri-

* Vid. Sir T. C. f. 319.
It seems he had not ob- served their own Regiam Majestatem, which is our Glanvil.

Sir Thomas says, Glanvil prefers the Nephew.

(a) Wen- dover de An. r199.

(b) Wend. Quod jura sua redderet universis: sub tali con- ventione Co- mites & Ba- rones Comiti memorato fidelitatem contra omnes homines juraverunt.

(c) Mat. Par. noverit discretio ve- stra, quod nullus prae- via ratione ulli succede- re habet in Regnum;

nisi ab uni- versitate re- gni unani- miter invo- catà spiritus gratia ele- ctus &c.

* F. 317.

[†] Mat. Par. Dico de hoc Comite, &c.

tual,

tual, which declares every King of England to be elect.

(a) Wendo-
ver dein ad-
juratus est
ab eodem
Arch. & di-
strictis pro-
hibitus ne
bonorem
hunc accipe-
re perfume-
ret nisi in
mente habe-
at opere qua
jurarat per
implere ad
hoc illis res-
pondens

Having broken his Contract, and notoriously de-
parted from that end, for which, according to the Con-
fessor's Law expressly Sworn to by him, he had been Con-
stituted or created King ; in making Warr upon his
People with Foreign Forces, with which he exercised
inhumane Barbarities, and as much as in him lay a-
lienating his Imperial Crown to the Pope ; he, in the
(b) Judgment of the Court of France, as well as of
the States and People of England, fell from his Royal
Dignity, the Throne was (c) become vacant ; and
during the Vacancy, the Administration devolved upon the
Barons : Wherupon they resolv'd to Elect a New
King, and sent a solemn Embassy to the King of
France, to send over his Son Lewis to be King of En-
gland, whose Wife was John's Sister's Daughter.

(b) Mat. par.
addit. q. a. b.
the French
King's advo-
cate says, late
non potuit
potuit ta-
men dimitt-
ters enim.

(c) Ib. va-
cautus,
regnum sine
Baronibus
ordinari non
debet unde
Barones ele-
gerunt sec.

(d) Mat. Par.
* Sr. T. C.
f. 182.
they call'd
Lewis the
Dauphin of
France to
the inheri-
tance of the
Kingdom as
being near-
est to John
by his Lady.

After John's death, many of the greatest interest in
England while Lewis was here, and Elionor Prince Ar-
thuri's Sister (who according to the vulgar Notion
ought to have been Queen) alive in Bristol Castle,
Elected Henry, John's Son : but were far from think-
ing him King upon the Death of his Father ; or from
repenting of what they had done to the Father ; but
they thought it advisable to cut off Lewis his expecta-
tion of the Crown. To which end the Earl Marshal
of England Summon'd a Convention to Gloucester, where
he

he told (a) the States, *Tho' they had justly prosecuted the Father for his Evil Deeds, yet that Infant was innocent ; because he is the Son of a King, and our future Lord, and Successor of the Kingdom, Let us say we Constitute him our King.*

At last all as with one Voice ; cryed thrice, let him be made King.

Here 'tis evident that he was not accounted King, till constituted or made, and was but a future Lord : and agreeably to this (a) Matthew Paris says, *They assembled in order to exalt Henry the King's eldest Son, to be King of England. He took the Coronation Oath more than once and at (b) one of his Coronations, had the Confessor's Sword carried before him by the Earl of Chester, one of the Earls Palatine of England, for a sign that that Sword was not to be born in vain. He having trod in his Father's steps, the States were likely to have made good their Solemn (c) Denunciation the 17th of his Reign, of deposing him in a common Council of the whole Kingdom, and creating a New King, which as appears by (d) Bracton a very Learned Judge in that Reign, was no more than the then known Law of the Kingdom. Various were the events of a long Civil War, in which at last the Death of the great Darling of the Church and People, the then hereditary High Steward of England, and the Bravery of Edward Henry's Son gave him the Victory : which they who were on his side, and his own experience of the Consequence of his former Counsels, kept within bounds of Moderation.*

Henry, to secure the Succession to his Eldest Son Edward, (e) had before that Success, caused many, and particularly the Citizens of London, to Swear to his Son as Successor.

After that, it should seem that a Parliament had made (f) a Settlement of the Crown. For in the 55th of his Reign a Writ was sent to London, *The Execution of*

(b) Mat.
West. f. 277.
and 279.
Kington Col.
2426.

(a) Mat.
Par. Ut H.
Regis fil.
primogen. in
regem Angl.
exalterent.

(b) Mat.
Par. An.
1236. 20. H.
3. insignum
quod est Co-
times palati-
nus & Re-
gem si ob-
ret habeat
de jure po-
tentatem co-
hibendi vid.
Wendover.
A Coronati-
on at Canste-
bury. 5 H. 3.
vid. etiam
lib. de Antiq.
leg. in
Archivis civ.
Bond. A 117

A Proclama-
tion 53 H. 3.
declaring
that he
would not
then wear
his Crown
and dispen-
sing with
the Services
of the Citi-
zens of Lon-
don and of o-
thers.

(c) Mat. Par.
Ipsi de com-
muni conci-
lio totius

regni; ipsum cum inquis consiliaris suis regno depellerent, & de novo Regem creando tractarent. (d) Bracton lib. 2. c. 16. Rex autem habet superiorum Deum. Item legem per quam factus est Rex, item Curiam suam, &c. Vid. etiam ib. c. 24. & l. 3. c. 9. (e) Lib. de Antiq. leg. in Arch. Civ. Lond. An. 1263. 44. H. 2. (f) 1. 54. H. 3. post ejus decepsum rectis heredibus corone Anglia.

which

which was returned to the Parliament that Year at Winchester, and 'tis probable the like had been throughout England; in pursuance of which Writ, the Mayor, Barons, Citizens, and Universallity of the Commons, Swore Allegiance to the King, after him to his eldest Son Edward, then to his Son John, after that to the right Heirs of the Crown, which plainly left the Inheritance as I have shewn it was from the beginning.

(c) Mat. Westm. &c. & Johes Comites nec non Clerus & populus ad magnum altare ecc. Westm. &c. Jeriter pro parerunt Regis fidelis. Jurantes. (d) Annales Wav. f. 227. Meta Convo. (e) Rot. Claus. v. E. m. 11. (f) Wal. Gate, (g) Mat. West. f. 430. s. E. 1. (h) M. Husepiatis mo quod si non rediero, in Regem vestrum filium meum Coronetis.

Upon the Father's Death, the (c) Clergy and Laity flock'd to Westminster, where they declared or received for King, Edward, then beyond Sea in the Holy War, so call'd: soon after this a great Convention, (d) of the States was holden in his Name: There a Chancellor was chosen, and other Provisions made for the Peace of the Kingdom, in Edward's absence, the Writ which they issued out, requiring the subjects in general to Swear allegiance to E. i. says, the Government was devolved upon him by Hereditary Succession, (e) and the Will of the Nobility, and the Fidelity performed, or Allegiance Sworn to him.

Agreeably to which Walsingham says (a) They recognized Edward, their Leige Lord, and ordained him Successor of his Father's Honour. Tho' he was a very Gallant Prince; yet, having taken ill Advice (b) being to cross the Seas, he upon a Pedestal at Westminster-Hall, (c) entreated 'em to receive him again at his return; and if he dy'd to Crown his Son King: which they who were then assembled consented to.

How much it was then known to concern a King, to keep to his part of the Contract, as he would have his People continue bound; appears by two great Authorities in our Law, of that time, Fleta, who, as to this matter, transcribes Bracton, almost verbatim; and the Mirrour (d) of Justices, which speaks of the first institution of Kings among us, by Election; for what End they were elected, and what they were to expect, if they answered not that End.

(e) Wall. f. 2. as (c) Walsingham informs us, Succeeded, not so much by hereditary Right, as by the unanimous assent of the Nobility and Great Men. He was for misgovernment

vernment, formally *Depos'd* or *Abdicated* from the Re-

(a) Wals. f.

^{207.} Rex

dignitate re-

gali Abdica-

tur & filius

substituerit.

gal Dignity, as *Walsingham* has it ; and his Son *Edward* was *Substituted*, or *Elected*, in his stead.

The Son indeed, tho' he had headed Forces against his Father, seem'd to scruple accepting the Crown, without his Father's consent. And *ex post facto*, after *Edward II.* had been *Depos'd*, and his Son elected with a threat, that if he refused, they would *Elect* some body else; the Father took some comfort at the *Election* of his Son, and as much (*b*) as in him lay, consented.

(b) Knight.

ou col. 252.

post multos

ejulatus &c.

1. E. 3. m. 28.

The Son it must be owned in a *Writ*, Cited by Dr. Brady, says, his Father removed himself, by the *Affent* of the *Prelates, Earls, Barons, and other Nobles*, and also of the *Commonality* of the whole Kingdom : Which being only in a *Writ*, issued out of the *Chancery*, can be of no force to limit or explain that *Act of the States*. And was but a civility or complement from the Son to the Father : What the *States* judged in the matter, will be very plain from the following Account, in a *Contemporary Authour*.

King (*c*) Edward remaining in Custody at *Kinelworth*, (*c*) Bib. Cor.
a General Council of the whole Clergy, and People of *Cleop. B. p.*
England was Summon'd, viz. of every City and e. *Annales de*
very County and Borough, a certain Number of *Gestis Brito-*
Persons, To treat and ordain with the Great Men, of *num de An.*
the State of the King and Kingdom: in which Council, *1316. con-*
at the cry of the whole People, Unanimously per- *vocatum est*
severing in that cry, that King Edward should be *conclivum*
Generale, &c.
Deposed from the Throne of the Kingdom; because
from the begining of his Reign to this Day, he had
misbehaved himself in his Government; had Ruled
his People wickedly; had dissipated Lands, Castles,
and other things belonging to the Crown; had by
Perverse Judgment, unjustly adjudged Noble Men
to Death; had advanced the Ignoble; And had
done many things Contrary to the Oath taken at his
Coronation; Walter Arch-Bishop of Canterbury, pro-
nouncing Articles of this kind, by *Affent* and *cen-*
sent of all, King Edward 2. is wholly deposed, and
Edward his Eldest Son, (*d*) advanced to be King of (*d*) in Regem
England. And it is ordained, that from thence forth he *An. he est*
should *substitutus*

should not be called King, but Edward of Carnarvan,
the King's Father.

And immediately Messengers were sent from
the Council to the say'd Edward the Kings Fa-
ther, to Notifie to him what had been done, and to
read to him the Articles upon which he had been
deposed. He answer'd, he was detain'd in Custody,
nor could contradict their Ordinances; but said he
would bear all patiently.

(a) Stat. 1.
E. 3. Rastal.
And it is observable, that a (a) statute of the King-
dom 1. E. 3. justifies the taking Arms against E. 2.
while he was in Possession of the Throne, and indem-
nifies all Persons for the pursuit of the *said King*, and
taking and withholding his Body.

E. 3. who knew that himself came in by an *Elec-*
tion of the States, being aware that if he should
dye before any provision were made about the Suc-
(b) Rot part
to E. 3.
(c) Sir T. C. the States of the Kingdom might determine as they
of Succession
f. 282, not-
withstand-
ing his being an act of Parliament, (b) whereby Richard, his Grand-
son born out of
the Jurisdi-
ction of Eng-
land he Suc-
ceeded his
Grandfather
in the King-
dom.
(d) F. 404
made, very *Heir to the Crown*.
Sr. Thomas (c) Craig, to suit his Rule of Succession,
makes this King to have Succeeded meerly upon a
known right of descent, without any priour settlement
of the Crown, yet when it serveth an other purpose he
owns that he was (d) declared *Heir* by E. 3.

C H A P. XXXIX.

A Continuation of the State of the Succession, and Na-
ture of the Hereditary English Monarchy; from R. 2.
to E. 4. inclusive; giving an Account of the Controver-
sie between the Two Houses of York and Lancaster,
and the rise of the Mistakes about de facto & de jure.

(a) He be-
gan his reign
An. 1377.

(b) Knight-
on f. 263.
Propinquio-

Richard, (a) 2. following the Example of E. 2. had
the same fate, of which the States of the King-
dom had some Years before given him fair warning, tel-
ling him they (b) had an Ancient Statute, according to
which

which they might, with the common Assent and consent of
the People of the Realm, Abrogate him, and advance
some Body near a kin of the Royal Stock.

(a) Rot. parl.
1. H. 4. n. 16.

(b) N. 52.

(c) Rot. Serv.
die Coron.

Henry 4.

(d) Rot. parl.

(e) H. 4.

(f) Rot.

parl. 1 H. 4.

n. 54. so wal-

sing. Ypod.

Neust. f. 156.

Regnum An-

gliae sic va-

canza.

(g) Rot. parl.

Sup.

Henot profiting by this Admonition, the States were
some (a) Years after put to the exercise of their Au-
thority, and having adjudged that he (b) justly ought
to be deposed, the whole States appointed Com-
missioners, for giving the Sentence of Deposition: And
a Record speaking of it, says, he was deposed (c) for
his demerits. The Act of State for this says, twas
as (d) in like Cases had been observed by the Ancient
Custom of the Kingdom.

This being done, Henry Duke of Lancaster (e) as
the Kingdom was vacant, rose out of his seat and
claim'd the Kingdom being void.

His claim was (f) als descendit be right lyne of the
blode comeyng fro the Gude Lord Henry Thero.

The reaon seems very plain, why he claim'd from
H. 3. his being the last inheritable Blood, which he
could claim from: not from R. 2. because deposed, nor
from Edward the 3d. because of the forfeiture of R.
2. declared or constituted his next Heir. Not from
E. 2. because of his forfeiture: Nor from E. 1. be-
cause E. 2d. had been his next Heir. H. 4th. Descent
from H. 3. was the qualification for an Election, this
was not as has been supposed, a strict right of
Succession, (g) as he was the next then appearing;
but he Intituled himself to a preference, before all other
Descendants of that Blood, as being a deliverer of the
Nation from Richard's Tyranny, (h) he having with the
help of his Kinsmen and Friends, recover'd the King-
dom, which was upon the point of destruction, through the
defects of Government, and violation of the Laws.

This induced the (i) States and all the People, U-
nanimously to consent that Henry should fill the va-
cant Throne. And they (k) appointed all the Cere-
monies of his Coronation. But as far as Proximity to
the last King could infer a Right, he being a Grand-
son to E. 3. had it before Mortimer descended from
Lionel Duke of Clarence under whom the Family of
York claim'd. Tho' no (l) Layman of knowledg
and Integrity, can be thought at that time to have
questioned Merit.

(g) Vid. the
debate at
large p. 127.

(h) wal sing.

sup. & Rot.

parl.

(i) Rot.

parl. n. 54.

idem status

cum toto po-

pulo absq;

quacunq;

difficultate

vel mora ut

Dnx præfa-

tus super eos

regnaret u-

nanimiter

consece-

runt.

(k) Rot. Ser-

vior. sup.

(l) Vid. in-

fra. the Ca'e

of Bishop

Merke.

questioned those Grounds upon which H. 4. was declared King; yet since 'tis hardly possible that there should be any Government, which some will not be desirous to shake off, as the Jews did the Theocracy; it can be no wonder that some would colour their Ambition or Malice, under pretence of love to Justice, and that they should object want of right, to disturb the most just and equal Government. What was at the bottom of Objections against H. 4th's title will appear by the Case of a true head of the Church Militant, Merk, or Mark, Bishop of Carlisle; who not being able as a Divine to make good his Argument against the receiving H. 4th, for King; was resolved to justifie it by dint of Sword, after he was made King.

- (a) Rot.pat.
2. H.4.rot.4.
(b) Interligati & conederati aduersario & inimico nostri Regis & regni sui de Francia & ad herentibus ad eundem aduersar.&c.
(c) Nota Richard's name was used only to Colour the inviting the French to over run this land.
(d) Quod ipse Episcopus unctus effet.
(e) Nota & of the whole Kingdom of England; and consequently the conseruer eccles. Anglicanæ per quam &c.
- In (a) the Second of H. 4. the Bishop was indicted, and try'd by a Common Jury, upon a special Commission, for that "he and other his Acomplices, among which there were two begottted Knights, Blunt, and Sely, were (b) Leagued and confederated together with the Adversary and Enemy of the King and Kingdom, the French, and their Adherents; Traiterously to bring the said Adversary into the Land of England, with intention to destroy the King, and all his Leige People of the Kingdom; And to new plant the Kingdom of England with our Enemies of France; that they in an hostile manner went up and down, making great destruction and slaughter; and without any Authority assuming to themselves Royal Power, Proclaimed (c) Richard to be King, and that they would not suffer Henry to be their Lord or King.
- To this indictment the Bishop pleaded Church privilege as an (d) Anointed Bishop, which the Court Overruled: The reason for which is very remarkable; because The matters contained in the said indictment, concern the Death of our Lord the King, and the destruction of the whole Kingdom of England; and consequently the (e) manifest depression of the Church of England; by which he claims to be priviledged, all which is high and the greatest Treason, and the crime of lese Majestey; nor ought any Man of right to pray in aid of the Law, or to have it, who commits such a crime, or intends to commit it, &c.

His

His Plea being thus over ruled, the Bishop pleaded not Guilty ; but being Convicted of the horrid matter contained in the Indictment, it seems he did not think this a fit cause to die for ; and whether he Merited a Pardon or no by sincere Repentance, at least obtained one : In which it is observable, that he is called, (a.) the late Bishop : for this Restitution to the Peace, ^{(a) Par.} ^{dono vimum} ^{oldem super} did not restore his Ecclesiastical dignity. ^{Epsicopo}

He who is still called the late Bishop, having a Settam pa-
Pardon sent him, Petitioned to be delivered out ^{cis Sec.} of Prison ; which was granted upon his finding Sureties for his good Behaviour ; and four-un-
dertook, that he (b.) should for the Future be- ^{(b) Quod} ^{ipse amo-}
have himself well towards the King and his Peo- ^{do se bene-}
ple. ^{geret erga}

Thus the fear of Death (*) reformed this Dominum, stiff Prelate ; and made him engage to sit quiet- Regem et po-
ly under a Government which none but the E- ^{populum.} ^{(*) Vid Sir}
nemies to England, and their Adherents, endeav- T. C. Fol.
our'd to Subvert. ^{327, where}

Still some were found calling themselves Eng- be com-
lishmen, who for the like ends, with Mark, would mends his
do their utmost to Blemish H. 4th's. title and this Learning
occasioned Oaths of Recognition, thrice repeated Loyalty. &
S^{r.} (a.) of his Reign. First in a Council at (a) This
Worcester, then in a great Council at Westminster, recited in
and after that in a full Parliament ; where the Petiti-
former Recognitions, which were Voluntary Associa- ons of the
tions, were affirmed ; (b.) tho' as is there said, Rot. par. 8.
there was no need of it. H. 4. P.

By those Oaths, " They acknowledged the i. m. 4.
" then King to be their Sovereign Leige Lord; volunt & ^{(b.) Dun}
" to obey him as their King ; and acknowledge Dun a-
forn comens quil non insigneatis my afferment.

" the Prince his Eldest Son *Heir Apparent*, and
" Inheritable to the Crown of England, to him and
" to the Heirs of his Body. And for default of

(c) Enb.
reliable-
ment. " such Issue to his Brothers and their Issue suc-
cessively, and (c) Hereditably according to the
Law of England, to (d) live and die against

(d) Par
viver G
merer en-
contre rous by others, upon some of the expressions, in the
les. *Gents Act* 50. H. 4, occasioned another (e) 7^o, which
demonde, by the Council, and assent of the Lords Spiritual

(e) Rot and Temporal, to wit the Prelates, Great men,
par. 7. H. Peers, and Clergy, and also at the earnest Petition
4. pars. 2. m. 2 .3. Ad of the Commons, and by Authority of the said
ammove[n]t Parliament, declares, that the Kings Eldest Son,
dam penitus (a) shall be, and is, and ought hereafter, and now
miseriam to be, true Lawful and undoubted Heir, and Univers-
al Successor of the Crown, and Kingdom of England
alt. ib. and France, and all the Kings Dominions, what so-
ever recising the ever and wheresoever beyond the Sea, and also has
Breach of Right of Universally succeeding the King, in the
former Oaths. said Crown, Kingdom, and Dominions; to bave to

(a) Fore him and the Heirs-male of his Body, and in default
G esse ac of such Issue so in remainder to his Brothers;
fore G esse debere.

(b) Rot. In a Charter pass'd in that Parliament, the
par. Sup. entail'd upon the King, and the Heirs-male of his Body, then to
his four Sons, and the Heirs-male of their Bodies
successively.

(c) Rot. It seems the (c) next Year some doubts arose
par. 8. H. upon these different Settlements, that 5^o then
4. p. 1. m. remaining upon Record; therefore they Cancel
and make void the Letters patens of the entail 50.
and change, and amend that Settlement which
they seem to have thought Defective.

1. In

1. In only declaring the Prince heir Apparent and
and *Inheritable* to the Crown ; which was no more
than to declare him, before others, qualified to
succeed if the States should Elect him.

2. In declaring him *Inheritable* only to the
Crown of England, without mentioning (a) its (a) Rot.
appurtenances ; seeming to think that in Grants par. 8 H. 4.
of this Nature ; nothing would pass by Impli- Purvous
cation. succeder en-

But to prevent all Ambiguities, they being, as (a) Suis
is said in that Record, in a Parliament (b) ac- ditz corone
cording to the Custom of the Kingdom, for divers Realms, &
matters and things concerning the King and his Signories,
Kingdom ; the King, with the Common consent pur les a-
of the Kingdom, Enacts, that a new Patent be Seal- voir ove
ed, Constituting Prince Henry Heir (c) apparent touter leur
to succeed the King in his Crown, Realms, and Do- appurten-
minions ; to have them, with all the Appurtenances, aluy &c.
after the Kings decease to, him and to the heirs of his (b) Com-
Body ; and so in remainder to his three Brothers muni con-
successively : whereby they had a larger Estate sensu Regni
than the Entail 7°. which was to Heirs-Male. luxia mo-
remejusdem regni, &c.

Thus, by virtue of one or more Settlements, (c) Heir
by Authority of Parliament, H. 5. succeeded, apparent
and yet it was thought a great instance of pour vous
the Confidence the States had in him, that in a succeder.
Convention, or Assembly, holden according to the
Ancient Custom, in which they treated about
(a) Creating a new King, some of the Nobility (a) Pol.
Immediately Swore Allegiance to him before he Virg. in
had been declared King. vit. H. 5. Dr. Gales
pref. script

But this is to be observed, that whereas his Father died the (b) 20th. of March, he is said to Saxon Dan.
be created King (c) on the 5th. of April: Death in quo de-
rege creando more Majorum agitabatur. Vid. etiam Stow in the Reign of H.
5. Mentioning this, and calling that Assembly a Parliament. (b) Walsingham.
(c) Polydore Virgil.

cutting off the Course of his Glories, his infant Son, H. 6. came in under the Parliamentary Entail: but the administration was held to have fallen

(d) Rot. upon the States, (d) who, accordingly, after having declared H. 6. King, in full Parliament, pass'd a Patent, constituting Humphry Duke of Gloster Protector of the Realm, John Duke of Bedford Regent of France, and Henry Beaufort Bishop of Worcester, and Thomas Beaufort Duke of Exeter, Govenours of the Young Prince.

The Death of the brave Duke of Bedford, occasioned not only the loss of the Possession of France, but the raising the Family of York to a pretence, which in all probability had been Buried to this day, had not H. 6th's Treacherous Ministers, put him upon making Richard Duke of York (e) Regent of France, after being High-Constable of England, and Lieutenant of Ireland.

With these advantages, Duke Richard set up, under a Mask of Popularity, as if he only sought redress of Greavances, while himself was the only National Calamity.

As nothing but success could give him Colour of Title, he was fond to conceal his Ambition even from his own Party till the 26th of H. 6th: yet (a) vid. after (a) that Acknowledged and Swore to H. 6th's the Oath²⁹ right: and confirm'd it with the Sacrament, which H. 6. Stow. Solemnities were to be Subservient to his Imaginary Divine right.

I am and ought to be Tho' by his Frauds and Perjuries he often came Subject and within the prospect of a Crown, 38 H. 6. he iegeman was deservedly (b) attainted of high Treason and an Association with an Oath was entered into by the Lords, wherein every one severally acknowledged H. 6. to be his most redoubted Lord and Rightwifh or Rightful, by Succession Born to

Reign

(b) Rot.
Parl. 38.
H. 6.

Reign over him, and the Kings Liege People.

Where I cannot but observe, that Sir Thomas Sir T.C. of Craig admits this to have been by the Law of ^{be Succession f. 252.} God, Nature, and Nations.

It remains

By that Oath to H. 6. every Lord engaged to only to be do his utmost for the Weale and surety of the King's enquired Person, of his most Royal Estate, and the very Con- ^{who dyed} servation, and continuance of his most high Autho- ^{last that} rity, Prebeminence, and Perrogative, and for the Pre- ^{was duly in} servation of the Queen, and of Prince Edward ^{seisid of the} his right undoubted Lord the Prince; that after ^{Kingdom} the King's Death he would take and accept the ^{&c.} Prince for Severeign Lord, and after him the Issue ^{f. 342. I premise to} Male of his Body; for want of such Issue any ^{this whole} other Issue of the King's Body &c.

^{Controversy, that the Question now is not}

This Association not being general through- ^{and lawfull} out the Kingdom, had no great effect, not so ^{King and} much from any belief the Nation had of Richard's, the true ^{heir of the} being Injured, as from the Burdens a Treacherous Ministry induce a weak Prince to lay upon the Subjects. This made the Commons of Kent most flou- ^{rishing} invite over, from abroad, the Duke and his Par- ^{Kingdom for many} ty who had Fled from Justice; then the tide turned, and the King became wholly in the pow- ^{Ages past} er of the Duke of York, under whose awe and influence a Parliament was call'd, where he laid Claim to the Crown, with Circumstances, which one would think, were enough to give any man a Face of Title: And yet this pretended Divine right, countenanced by Providence, was mighty qualifed by the courage of the Parliament, and their regard to the Constitution of this Monar- cby.

(a) Rot. His claim was, (a) as Son to *Ann*, Daugh.
 parl. 36*H.*
 6 N. 11. ter to *Roger Mortimer*, Son and Heir to *Philippa*,
 Daughter and heir to *Lionel Duke of Clarence*,
 Third Son to *E.* 3. whereas *H. 6.* was
 Grandson of *H. 4.* Son and heir of *John of Gaunt*,
 the 4th. and Eldest Surviving Son. After debate
 (b) N. 12. among the (b) Lords upon this matter, these
 Objections were agreed against *Richard's* pre-
 tence of Title.

1. *The Oaths they had taken to the King their Sovereign Lord.*

2. *Acts of Parliament made in divers Parlia-
 ments of the Kings Progenitors, of Authority suffi-
 cient to defeat any manner of Title to be made to any
 Person.*

3. *Several Entails made to Heirs-male.*

4. *That Richard did not bear *Lionel's* Arms.*

5. *That H. 4. took upon him the Crown,
 not as Conqueror but right Inheritor to H. 3.*

*All Materially urged against this for Richard.
 was.*

1. *That Oaths do not bind against God's Law;
 and that requires Truth and Justice to be main-
 tain'd; but being a Spiritual matter, he refers it
 to any Spiritual Judge.*

2. *That there was but one Entail of the
 Crown, 7^o. H. 4. but that this was void against
 the right Inheritor of the Crown, according to
 God's Law, and all Natural Laws.*

3. *It could be Justified by Record, that H.
 the 4th's. saying was not true.*

4. *Upon which tis Observable.*

1. *That Duke Richard's answer goes upon
 a manifest begging the Question; and supposing,
 that*

that he had a right which could not be Barred by
Act of Parliament.

2. That the Lords having mentioned several
Entails upon Heirs-male; we are to believe that
there was then upon Record, the Entail upon
Heirs-male in the time of E. 3^o pleaded by
(c) Judge Fortescue in defence of the Title of
his King H. 6^o this we are the rather to believe,
because there was but one Entail upon Heirs-
male in H. 4th Reigo, nor is Richard's denial any ar-
gument against this it appearing that he thought
it sufficient for him to affirm any thing, and of Worster
this was to pass for truth and Law. Thus he
denies, that there had been any Entail but 7^o
H. 4^o forgetting that which had been made
5^o and was amended 8^o H. 4^o and so very much
did he mistake, that he suppos'd the Entail 7^o to
be upon the (b) Heirs of the Body, when it was
upon Heirs-male of the Body of the Son, and
for default of Male Issue to other Brothers and
their Male-issue.

3. What the Lords say of Richard's not bear-
ing Lionel's Arms, confirms another objection
against him made by Judge Fortescue, from the
Bastardy of Philippa Born while Lionel was beyond
the four Seas, and never own'd by him, nor did
she, or her descendants, till the time of this Claim,
bear the Arms of that Family.

4. Richard's right of descent, admitting there
had been no Illegitimsey, is laid as a right in
Nature, but either this must be as the Laws of
the Land Guide the course of Nature, or other-
wise, we must go back in search of this right, if
not as far as Adam, yet to some descendant from
the Eldest House of the Saxon royal Family; to
such at least, as could derive their Pedigree from

(c) vid.
unreasona-
bleness of
the new se-
paration by
the late B.
and Fortes-
cue's M/s.
of this, de-
longing to
the Cot-
ton Li-
brary, but
not now to
be found
there, unless
restored ve-
ry lately.

(b) N.
15. to be
unto him
and to heirs
of his Body
coming &c.

some House Elder than King *Alfred's*, which may be done at this day. Besides, if we should look back to a right in Nature, all the Kings, descendants from *H. 2.* from whom *Duke Richard* came

(c) *Elias* as well as *H. 6.* must have been Usurpers, *H.* nor *Wife* *2d's.* Children having been begotten on (c) another man's Wife, who had been Devorced for *King of France.* Mat. par. not Marry again: nor does it appear that the *de. An.* *1150.* Devorce was from the *contract.* Or if this master should admit of Debate, such of our Kings as descended from another common Ancestor, King *John*, must have been Usurpers, not only by reason of *John's* supposed *Usurpation upon Arthur of Britain* and his Sister, but in that his Children were begotten on (d) another man's Wife,

(d) Mat. West. f. *1209.* who does not seem ever to have been Devorced: and besides, according to the Law of Nature it would seem, that *John* had a former Wife in being, for he was Devorced from her only for their being *Third Cousins*, as *H. 2d's.* Wife was from her first Husband, as they were Cousins in the 4th. degree. If the first Marriages in both cases were void, or voidable, it would have been only by the Laws of the *Romish Church*; but if those Laws shall make a *Natural right*, by Governing the course of descents, much more shall the Laws of particular Countries. If by the Law of Nature *Duke Richard* meant that which the consent of Nations made to pass for the dictates of Nature; according to (a) *Cujacius*, this Law of Nature is for the right of *Proximity*, which *John of Gaunt*, from whom *H. 6.* descended, had to his Father before *R. 2.* and *H. 4.* *John of Gaunt's* Son, had before the Son of *Lionel's* Daughter, supposeing her Legitimate: And by the same rule that Sir *Thomas Craig*

Craig and other Scotch Divine right men suppose that Bruce's Title was pre-ferrable to Baliol's, the House of York was to be preferred before that of Lancaster, upon the Seisin of the First Male of the Royal Family.

But here Sir Thomas Craig comes in with a Sir T. C. Terrible Dilemma, in relation to Edmond Duke of the juc-
of York, the only Surviving Uncle to R. 2 cession f.

"If the right of Representation took Place in ³³⁵.
"England at that time, as most certainly it
"always did, then the Children of Lionel were
"to be preferred to Lancaster, as being a degree
"nearer, but if no regard was due to the right
"of Representation, York was one degree nearer, as
"being the Uncle of Richard, while Lancaster and
"Richard were only Cousins.

Where,

1. He admits Baliol, who had the Representative right of the Eldest Sister, by the Law of the Dominant Fee, which ought to Govern, to have had the only Legal Title.

2. He Injudiciously makes the Children of Lionel and of John of Gaunt, who were Brothers Children, to stand in different degrees; when the only Question was of Preference in the same degree.

3. As to the Title of Edmond by proximity, he being in England, and making no Claim, was evidently concluded by the act of Settlement, to which there was his own consent expressed or implied.

4. Sir Thomas but a little before, had own'd that Edmund dyed without Children, and in Fact 'twas 3^o. H. 4. so that if Edmund could not have had any right after the Settlement of the Crown

Crown upon H. 4 by Act of Parliament; from the 3d. of his Reign, H. 4. was Lawful and Rightful King upon the rule receiv'd in Scotland in Bruce's case: yet see how Partial men are to their own Country.

f. 334.

He agrees with Doleman, that the Family of York had no pretence to the Crown when King Richard was depos'd.

But says he,

" Philippa and her Son Roger, or her Grand-
" son Edmund, was the true and Lawfull Heir of
" the Kingdom, and next in Blood to Richard,
" who dying without Children, the Succession
" devolved to his Sister Ann, who was Wife to
" the Earl of Cambridge, and so that right of
" Succession which formerly belong'd to the
" Mortimers, pass'd unto the Family of York, o-
" therwise York being only the 4th. Son of E. 3.
" was by Birth-right only after Lancaster, nei-
" ther had he ever made a Claim about the Suc-
" cession, either of his Father, or of his Nephew,
" by his Brother Edward.

Where,

1. He makes York the 4th. Son of Edward the Third, robbing John of Gaunt of his Birth-right.

2. He admits that York made no Claim, and as if he continued his mistake of York's standing in the Place of John of Gaunt, supposes he might have Claim'd the succession of his Father in right of Proximity.

3. To divert the enquiry into the Resemblance to the dispute between Balial and Bruce, he makes Philippa and her Son one Heir.

4. If Philippa was not the Bastard Daughter of Lionel, as she had been reputed, she could not be nearer

earer in Blood to King Richard then Henry, they both being in the same degree; and consequently the Question returns, whether, in the same degree, Males are to be preferred before Females, or the dignity of the Elder House is to prevail.

According to the Practice in Scotland, the first male, tho' of a younger House, has the right; according to the Law of England, the Dominant sex, Female of the Eldest House is to be preferred, in an ordinary course of descent, but the States of the Kingdom in such case, have Rightfull power to determine according to the exigencies of the Publick.

If therefore Richard Duke of York, having no Colour of Claim from the Law of Nature, in any of the respects hitherto consider'd, meant the Law of reasonable Nature; what reason can be assigned why the Eldest issue of a King's Eldest Child, whether that issue be an infant, or void of understanding or Humanity, ought Universally to succeed to Crowns, before the Kings surviving Son, whatsoever be his Merit, or the necessities of the Publick?

And why should not a Moral incapacity in this sense be a Natural one?

The Learned Grotius, who must be agreed to be a much better Authority than either Sir Thomas Craig, or the more Subtle Sir George Macbenzy, says: " For the Niece, from the Elder Son to exclude the younger, cannot hold in hereditary Kingdoms; For that gives only a capacity to succeed. But of those that are capable, regard is to be had to the Privilege of the Sex." Grotius de jure Belli & Pacis L. 2. scđ 24.

If the great Lawyer Fortescue, who as my

(a) vid. be seen by the (a) Rolls of the Queens Bench, we
Ror. de. B. Chief Justice there, from before Richard's pre-
R. tence to the Crown, to the end of H. 6th's Reign
may be allowed to speak the Sense of the Lear-
ed in that time; they held the Power of the Pri-

(b) For (b) to Flow, or be derived from the People, accord-
ing to which it must have been taken to be mor-
taud. Le- according to Natural right, that the People wh-
gum Angli. appointed the Succession in any Family, shou-
a Rex a po- pulo potes- Govern and vary it, as they saw occasion; that
zatem cf. that from their Pitching upon a Person, or Fam-
fluxam ba- ly, they should be for ever debarred from do-
ing Justice to the Demerits of one, and to the
Merits of another in that very Family.

I am sure the Learned Grotius, who distin-
(d) C. gishes (c) Civil Succession from Hereditary, say-
Grot. de jure Belli & (d) an Hereditary Kingdom is one which was man-
pacis Lib. 2. so by the Peoples free consent; and in such King-
Sect. 22. doms he supposes several rules of Succession, b-
(e) Ib. Guessing at, or presuming the will of the Peo-
Sect. 14. ple. If Duke Richard would have admitted the
Law of the Land to Govern the course of des-
cents and Succession to the Crown; then 'tis ev-
ident beyond Contradiction, that H. 6. came
in by a Legal and Natural course of descent; and
however, according to Laudable Custom from
the begining of this Monarchy, Acts of Parlia-
ment may alter the Course.

(a) Ror. And yet the then Timerous (a) Lords, with
Parl. 39. out Concurrence in that matter of the Stout-
H. 6. 18. the Oaths Commons, agreed that the Duke's Title could
not be defeated; but they thought not themselves
said Lds.

had made unto the Kings Highness &c. said, and their Consciences therin
cleared, it was agreed that the said Mean should be opened, and declared to
the King's Highness.

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charged from their Oaths to H. 6. unless he could consent to the Mean, or expedient they found out, which was for the King to keep his State and Dignity Royal during his Life, and the like and his Heirs to succeed him in the same: to this both the King and Duke consented. But either the Kings Right to the Possession, nor the Duke's to the Reversion, arose from their private agreement, but from the (a) Authority of Parliament; according to which, the King had as Parl.N. (a) Ros. such right (b) to the Possession, as the Duke to 18. The Reversion.

And it remains as the Judgment even of that Parliament, what ever Force or awe were over it, that Richard Duke of York had no right to the Possession, and neither was King, nor of right born, and so ought to be King, till H. 6. should die, or cease to be Authoriz'd by au- King, by advice of the Lords, condescend- ed to the ac- tion. Nay even E. 4th's Judges owned, that H. 6. was not a meer Usurper because (c) the this pre- Crown was Entailed to him by Parliament. As a sent Parliament. Judgment upon Duke Richard's pretence (b) N. of Title, contrary not only to National, but Divine Authority, giving Sanction to the Laws 27. Saving and ordain- of the Kingdom, and his own Oaths; he died ing by the within sight of the Promis'd Land. same Au-

But (d) soon after his Death, his Son Edward, having less to answer for, and success to recommend him to the People; upon more Specious pretences, succeeded H. 6. by a manifest Election.

Tho' he and his Father had, upon the agreement Established in Parliament, Sworn to be true and the said Lordship of Ireland, during his Life Natural. And furthermore by the same avis & Authoritie, wolle, consenteb and agreeib, that after his de- sis, or when it shall please his Highness to ley from him the said Coro- nes &c. or thererof ceassib &c. (c) Baggots cap. 9. E. 4. Carle Corone fuit ville alij per Parliament. (d) An. 1460.

to H. 6. during his Life, or till he should freely quit his Crown ; the Dread of their An-
got a Liberty for 'em to enter their Protesta-
tions, that this was upon the express condition
that the King performed his part, but if
should compaile or imagine the Death or D-
struction of the Duke, or his Blood, should se-
seit the Crown : and indeed it seems that
first Acts of Hostility after this agreement, were
committed by the Queen, and others of the
King's Party, who is attempting to rescue him
out of the Custody of the Duke of York, put
end to his Pretensions with his Life.

(a) Stow. His Son Edward (a) having routed the Earl of Pembroke, and other the King's Loyal Subjects in a Battle near Ludlow, March'd up to London where he was received with joy on the 28th February ; then he calls a great Council of Peers to whom he opens his Claim upon the King Breach of the Articles. After the Lords had con-

(b) Vid. sidered of the matter, they (b) determined Notes upon Authority of the said Council, for as much as King Harry the Earl of ry, contrary to his Oath, Honour and Agreement Stamford's had Violated and Infringed the order taken and Speech A. 1692. Cit. acted in the last Parliament, and also because being Graf. insufficient to rule the Realms, and unprofitable to nation's Cbr. Common-wealth ; he was therefore by the aforesai f. 652. Authority deprived and dejected of all Kingly hon 653. 659. our, and Regal Sovereignty. And incontinent Ed Speed f. 851. Stow ward Earl of March, was by the Lords in the sa f. 414.415. Council Assembled, Named, Elected, and Admitt for King and Governor of the Realm. After this

(c) ib. the same day, the consent of the (c) Comm People was ask'd in St. John's Fields, where great Number were Assembled : the Lords being informed of the Consent of the Commons, acquainted

the said Earl with their Election, and Admission, and the Loving Assent of the Commons. The next day he went to Westminster, where his Title and Claim to the Crown was declared, First as Son and Heir to Richard his Father; right Inheritor to the same. Secondly By Authority of Parliament. Thirdly (a) And Forfeiture committed by (a) 3d. f. 6th.

The (b) Commons being again Demanded, if oned in they would admit and take the said Earl, as their Sovereign Lord, all with one Voice cried lingshead Tea, Tea, which Agreement Concluded, he was then f. 663. Proclaimed.

not mensis-

(b) *Noses*

upon the

Earl of S^cs

Spec^b Sup.

Here it is Observable,

1. That Edward did not Claim upon any Title Prior to the Settlement in Parliament 39. H. 6. and therefore in effect, Claimed as Adopted Heir to H. 6. as H. 2d. had been to King Stephen.

2. He alledged against H. 6 Forfeiture by Breach of the Contract Establish'd in Parliament, and a Moral Incapacity in him to Reign.

3. Notwithstanding this, he did not set up as King, before a Solemn Judgment pronounced against H. 6. and in Favour of him, and the Formallity of the Publick Election.

4. It appears, that tho' he came to London, and was possessed of the Head and Strength of the Kingdom and H. 6 had, in Effect, Abdicated; he, who according to the Modern Notion of the Successionaries, should have been King upon the Death of his Father, was not King, nor so reputed by his own Party, till all those Accustomed Ceremonies were over, the last of which was

on

(a) Hol- on the (a) 4th. of March. Now if it shall prove, linghead that in the Judgment of King Edward's own Par- 663. After liament, his right to turn H. 6. out of Pos- March had session was founded in H. 6th's. Breach of the Con- taken upon trait, Establish'd in Parliament; that E. 4. was him the Go- not King till the 4th. of March; and that no Act verment committed against him before that day, was Treason, nor was there or could there be Treason against his Father, who never had been King; then it will appear, that some Consent or Election of the States, or People, was essentially necessary to make a King, even of one who had, or at least was suppos'd to have, all the Right that Descent could give him; and the other King must have Forfeited, or ceased to be King, before such Right could be duly Claimed. But,

(b) Rot. Parl. 1 E. 4th's. title, is held to be a restitution to the same: M. 8. so that the very Title, or Right, was as if it had Declaratio been extinguished.

(c) 1b. in Parliament; and is expressly charged with the Breach of it.

(d) Rot. Parl. 1. E. 4th. (d) is adjudged to have been in E. 4. M. Lawfull Possession of the Realm, upon the 4th. of S. N. 20. March; and (on that day) lawfully Seiz'd, and 21. 22. 23. Possessed, but not before; and then the exercise 24. of the Royal Estate by E. 4. and a motion of H. 6. are declared Rightwise, Lawfull, and according to the Laws and Customs of the Realm.

4. That Act says, the Crown ought to have de- scended to Edmund Mortimer, Edward's Ancest- tor, and after his decease to the next Heir of Blood; if the same Usurpation had not been Com-

Committed. Where according to that Act, the Crown did not descend to any one of Mortimer's Family, while the Person who they suppos'd to have Usurped the Crown, or any descendant from him, kept Possession.

5. Edward's Parliament held his Father to have been no more than Duke of York: And tho in the (a) Act Attainting H. 6. he is Charged with the Murther of Richard Duke of York; the first Treasonable Fact in H. 6. and others, is laid in Levying War, on the 29th. of March, and imitating to Depose their Sovereign Lord Edward, who had been Declared King on the 4th. of that March: And H. 6th. Forfeiture is laid in Acting against his Faith and Allegiance to his Sovereign Lord: Whereby they plainly shew, that as there could be no Treason against the Duke of York, because he never was received for Sovereign Lord; neither could there have been any against E. 4. unless he had been so received.

(a) Rot.
Parl. I. E.
4. M. 17.
convictio
quorundam
Dom. &
al. autho-
ritate Parl,

6. The Proceedings at that time being the honourable Authority, for the late mistaken Notion of King *de jure*, & *de facto*, they who have made such a Noise with both must yield, that there is not the least shadow of Pretence from the Judgment of those Times, that there was a King of Right, at that very Time that another was in Fact: It going no further, than that the Person who was King, ought not to have been King; but while he was King the other was none. And it amounted to no more; but that the States of the Kingdom had been unjust in giving the Crown to H. 4. and making his the Reigning Family, when they ought to have given it to another House; Not but that their Declaration and Judgment, was the only Rule Authorized by God and the Laws, for the Obedience of the Subject, and the Exercise of Regal Power.

7. The Judgment of E. 4th. first Parliament, whatever hard Names they gave that Family on which they Trampled, was so far from being Authority, as has been (a) pretended, against the receiving his late Majesty of Glorious Memory,

(a) Vid. upon the former King's Breach of the Original or The De-Common Law Contract, confirmed by several Debate at claratory Statutes of the Kingdom, and the Solemn Large, &c. Oaths of our Kings; that it is express for the (b) p. 128. the Earl of Eviction and Amotion of one King, upon a breach March u. of Contract established in Parliament, and the setting up another by an Election.

Death of R. 2. and consequent ly E. 4. And it is observable that the Act 1^o. (c) E. 4. which confirms several Judicial and other Acts, of such as it calls Kings only in Fact, says other than from him, by Authority of any Parliament holden in their was undoubted Times; plainly admitting that Authority to be sufficient in it self.

King by Conscience H. 6. coming again into Power, because of a Possession, with such a consent of the People as by Nature, made E. 4. King; was (d) formally Elected at the by Law: Tower: And in H. 7th. time (e) was adjudged Referring to have had his Attainder purged, by his Re- to the Par. adaption of Power; which seems not to have been Rot. 1. E. 4. till he had been Re-elected. Then H. 6. calls a (b) Rot. Parliament, where he in his turn Attaints the Parl. 1. E. Adherents of E. 4. and, as we are to believe, 4. M. 7. & himself: But the (f) Record of that having been 8. and that conceal'd, and the Rolls Lost, it appears not God had given Ed. whether it was for any Act committed before the grace H. 6th's. Re-adaption of Power.

The Tide again(g) turning for E. 4. all the Acts of Parliament are revers'd, and Declared or made void. From the time that E. 4. had been Declared rightwise King, he was held to have continu'd the Pos-

(c) 4. E. Stow. f. 412. (d) 1. H. 7. f. 4. 6. (e) referred to 170. E. (f) Rot. Parl. 17. E. N. 34. 4. vid. Rastal. cap. 6. 4.

session of the *Regal Dignity*, tho with-held from the exercice of the Power; therefore H. 6. from the first Admission of E. 4. to the Crown, was accounted no King, and his Parliament, to be but a *Pretended Parliament*.

C H A P. XL.

Of the State, of the Succession and Nature of this Hereditary Monarchy, derived down from E. 4 to our J. 1st. of Scotland the 6th. with the Judgment of himself and his first Parliament, of the contract between Prince and People. What Proceedings Sir Thomas Craig allows upon the Princes Breach of his Part.

E. 4tbs. usage of H.6. was repaid to his Sons, by their Uncle R. 3. Some will have it that he made them away, as indeed it is intimated in the Act Attainting R. 3. but 'tis certain that they were Bastardized in a Convention, whose Acts were by a Parliament (a) after Richard was admitted King, Declared for Truth, and not to be doubted; and there are (b) Authoritys to induce the Belief, that (a) Rot. Edwards Sons were really Bastards, by Reason of Parl. 1 R. 3 the Father's Precontract: However the (c) Conventi. (b) "Vid. Buck's on declared, that they were not to Reign because Hist. they were Infants, and their Mother Ignoble, and (c) Rot. Married Clandestinely without the knowing and Parl. 1 R. 3 Assent of the Lords. George Duke of Clarence, the next Brother to E. 4. having been Attainted in a Parliament of E. 4. they "having singular confidence in Richard's particular merit, had chosen "in all that in them was, and by that their certain Writing, chose him their King and Sovereign Lord. To whom they knew of certain, "it appertained of Inheritance [to be chosen].

And observing, that tho' the Learned in the Laws and Customs knew His Title to be good, the most part of the People were not sufficiently Learned in the Laws and Customs; they Declared "that the Court of Parliament is of such Authority, and the People of this Land of such a Disposition as Experience Taught, that Manifestation and Declaration of any Truth or Right made by the three States of the Realm Assembled in Parliament, and by the Authority of the same, maketh before all other things most Faith, and certain quieting of mens Minds, removing the occasion of Doubt and Seditious Language. Therefore by the Authority of that Parliament, it is pronounced and Declared, that their Sovereign Lord the King, was, and is, the very undoubted King, as well by Right of Consanguinity and Inheritance, as by lawful Election, Consecration, and Coronation. And they Enact, Establish, Pronounce, Decree, and Declare Edward the Kings eldest Son Heir apparent, to him and his Heirs of his Body. Any man who shall compare that Act at large with the former Presidents; must see that it was Penn'd with great Wisdom, and Regard to the Constitution of the Monarchy.

And tho', out of an usual Complement to the prevailing side, R. 3. has generally been represented as a Monster in Person and Nature, the learned (a) Buck has made it doubtful, which was the most deserving in all things, R. 3. or H. 7.

(a) Bucks
Hist. of
R. 3.

(b) R. 3. Certain it is, that tho' the Crown had, by Authority of Parliament, been settled in remainder after H. 6. N. 2. upon (b) Duke Richard and his Heirs, and that Duke's Grand Daughter was alive and Marriagable, in the Reign of R. 3. her supposed Right gave him no Disturbance, and his Possession was very quiet, till he disengaged the Duke of Bucking-

ham (who was the great Instrument of setting him up) by rejecting his Claim to be *High Constable of England* : which was an Authority dangerous to be trusted in the Hands of so popular a Man : Nor could the Duke and his Faction expect to succeed in their Conspiracy, without the support of *French Forces* : And, accordingly, applied themselves to *Henry Earl of Richmond*, afterwards

(a) vid.

H. 7. with whom the Duke of (a) *Bristany* had for*Comines*

some years kept even E. 4. in awe.

unjunc

Henry was glad of the opportunity : And to strengthen his Interest, agrees with some of his Party to Marry the Daughter of E. 4. but was far from making any Claim in her Right.

*Princ de**Engleterr c*

It is very probable that one of E. 4th's Sons was then alive : Be that as it will, as appears by Statutes 1. H. 7. his Parliament held that he Landed with Title : And R. 4. being deserted, and slain in the Field of Battle ; that opposition to Henry was, by Authority of Parliament adjudged *Treason*, against the *Sovereign Lord* of this Land : and H. 7. was held to have recovered his Right.

After this when H. 7. met (b) his first Parliament, he, with his own Mouth, told the Commons in full Parliament, that his Accession to the Right and Crown of England, was as well by just Title of Inheritance, as by Gods true Judgment, in giving him *Victory over his Enemy in the Field*. In which, bateing the Settlement in the time of the Confessor, H. 7. claim'd, as W. 1. did by the Inheritance of Consanguinity, and that success which gave him the preference before others of the same Blood ; especially, since that Enemy, whom he subdued, was held to be an *Usurper*. Thus 'tis evident, that he was accounted, before H. 7. Ian-

(b) Reg.

Parl. 1. H.

7. Idem

*Dominus**Rex prefata**suo proprio**eloquens o-**stendendo**suum ad-**ventum ad**jus & Co-**ronam An-**glie fore-**tam per**ded**Victoriam de inimico suo in Campo.*

ded ; but if it be truly considered, his Usurpation, if any, must have consisted in the Tyranical exercice of his Power, which the Duke of Buckingham had urged to justify his Arms ; and not from the assuming it : And that H. 7th's Sovereignty was founded in that *Election*, of the Body of the People, without a formal *Convention*, which pitch'd upon him as a fit person, to deliver them from their real or imagin'd Yoke.

This will appear beyond contradiction, from the proceedings of that *Parliament* upon his claim,

(a) Stat. par. 1. H. 7. Rot. self full Authority in the Matter ; and (a) decl-
Parl. II ring their hopes that it might be to the Pleasure
est ordeign of Almighty God, the Wealth, Prosperity, and Securi-
establ. Par. ty of this Realm, by Authority of Parliament settles
authorite the Crown upon H. 7. and the Heirs of his Body,
du dit Par- exclusive of all others.

Parlament &c After which, indeed, they desired him to Mar-

(b) Rot. Parl. 1. H. 7 ry Elizabeth, E. 4th's Daughter, (b) that by Gods
vid. sir Grace there might be Issue of the stock of their Kings.

Th. C-s. But then special care is taken, that neither the
mistake. f. King or the Children of that Marriage, should be
249. As if thought to derive any Title from her : For tho'
the Settle- they, by Authority of Parliament, repeal her Ba-
ment were stardy declared 10. R. 3, they, by (c) the said At-
upon the thority, ordain that the then Act, ne eny clause in the
Issue by that Mr. same, be hurtful or prejudicial to the Act of Establish-
riage.

(c) Ib. N. 18. ment of the Crown of England, to the King and the
Heirs of his Body begotten.

(d) Ib. After this H. 7. obtains a Bull from the Pope,
Cor. Cleo. which says (d) the Kingdom belong'd to him, not
E. 3. only by right of War, notorious undoubted (e), nearest
(e) Ib. pro- ximo Suc. Title of Succession ; but also by the Election of the Pro-
cessionis vi- lates, Peers, Great-men, Nobles, and the Commons
tulo.

of all the Kingdom, and by the known, and decreed Statute and Ordinance of the three States of the said Kingdom of England (a) in their Convention call'd a Parliament.

(a) In
Ipforum
conventu
&c.

According to this, tho his Reign was held to have begun before he had been declared King, it was, as I shall have occasion to observe in other Cases, only by way of Relation to that Solemn Investiture, without which he had never been King. That his Right must have been derived from a plain Election, is very evident; for,

(b) Vid.
the Bookr.
H. 7. f. 4.

1. He had been (b) attained in a Parliament of R. 3. and if the Royal Blood could not be so attainted, but when ever a former King ceased to be King, the Person so attainted, standing next to the Crown, should have his attainder purged, by the descent of the Crown; then according to them of this Opinion, the Earl of Warwick, Son to George Duke of Clarence, who had been attainted by Parliament in the Reign of his Brother E. 4. must have had the right before H. 7.

And yet, if we regard the distinction between proximity and Representation, H. 7. was sup. in that respect more truly (c) the next heir to the Crown, but in what sense soever the Resolution of the Judges (d) i. H. 7. has been taken, they held the disability to cease ex facto, (*) that he il prist sur took upon him the Royal Dignity to be King; not by any imagined right of descent.

(c) Vid.
the Bull

(d) Reg.
Book 1.H.

7. f. 4. Eo

Facto que

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yal dignity
desire roy,

H. 6. and applied H. 7. (*) Sir T. C. f. 296. the Stain of this said of Blood ceases in the Succession of a Crown f. 378. 379. 380. 385. sup- poses a Legitimation by Act of Parliament and a supervening Marriage gave a Right of Succession to the Crown.

At

At least, one of the Children of E. 4. was alive when H. 7. came to the Crown.

3. Tho' in truth, it appears by the Statute reversing the attainder of H. 6. to have been the Judgment of H. 7th's. Parliament, that H. 6th's. Family; of which he was, ought to be the reigning Family; yet H. 7. had no pretence to preference in that Family, but from his merits, and the Peoples Choyce. For,

1. His own Mother, who stood before him upon that Line, was then alive.

2. He came from a Bastard Branch, his Ancestor being the Bastard-Son of John of Gaunt,

(a) Rot. dureing former Marriages on both sides; tho' Parl. 20. there was a Legitimation (a) 20. R. 2. that neither did, nor was intended to extend to Capacim. 6. & 4. Inst. F. 36. (b) Rot. an Act of Parliament, called (b) Natural Leige prrl. 3. H. Lord.

7. m. 15.

The attaine- Certain it is, that he was never in his time, or der of the E. after, Authoritatively, declared or accounted, of Line. King only in Fact.

And they who will take the distinction of King in right and infall, from the last Parliamentary Declaration in the matter before the Revolution, must hold, that the Kings of the reputed Elder House, who Reign'd next before the Restitution of the younger House, which had been settled the Regnant Family for three Reigns successively; were Kings only in Fact, but not of right. And yet it is not to be thence inferred, they were to be accounted Usurpers, for not standing first upon that Line which ought to have had the preference. But when any Prince of either Branch had

had Justice done to his Merits, who would not say, that he ought sooner to have been King?

H. 8th. (a) came in under the Authority of Parliament, which had made H. 7. the head of a new Succession, as the Crown had been Entailed upon him and his Issue. And tho' H. 8th's. Mo-

ther was Daughter to E. 4. whatever Dr. Brady (b) Suggests, it has appeared above, that parti- (b) Bra-
cular care was taken by H. 7th's. Parliament, die's In-
that the Crown should not be thought to def- trod f. 391.
cend by Proximity of Blood, but that the right of next Heir
Succession was to be derived from Parliamentary Crown, by
Authority.

It is beyond Contradiction, that in the Judgment of H. 8th. and his Parliaments, the Inheritance of the Crown was variable as Parliaments ther. should determine; and that no Man could right-
fully succeed, without such appointment.

By Authority (c) of his Parliament 25°. the 25. H. 8.
Marriage with Catherine, Mother to Queen Mary, c. i.
was declared void, and that with Ann, Mother to Queen Elizabeth Lawful, and the Children made Inheritable, according to the course of Inheritance, and Laws of this Realm, first to Males, then to Females. Twas made high Treason by Writing, Print, Deed or Act, to attempt any thing to the Prejudice of that Settlement: and the Substance of an Oath was appointed, (d) afterwards 26. H. 8. made more express, by another Statute, repealing all Oaths to the Contrary, and engageing the Subjects in maintaining that Act of Succession, to do against all manner of Persons of what Estate, Degree or Condition so ever be be.

Sir Thomas Craig thinking these two Statutes of great Service to his Point, I must not pass by his Blunders about them. Having mentioned the Statute of E. 3. about Children born in Foreign parts,

parts, which has an exception for the King's Children, he says,

f. 246. "Here the Law of Succession in the Crown, is evidently distinguished, from the Law of common Succession, or the Succession of private Men. Then, mentioning the Settlement above by the Statute 25. H. 8. he observes, that after the particular Limitations, the remainder was to the right Heirs of his Highness for ever, by course of Inheritance, as the Crown of England has been accustom'd to go.

"Which Statute all the Nobles, &c. Made or took a Corporal Oath, to fulfill, maintain defend and keep, to their cunning, wit, and uttermost of their Power, which Oath was enacted, and enjoyn'd by a Statute in the 26th.

He adds,

f. 257. "Any Person who compares these two Statutes together, must observe these two things in them. That the Succession of the Crown of England descends the same way that other Inheritances use to do, by the Law of God, Nature and Nations. And that those Laws of Succession have obtain'd from the begining of the Kingdom, and have been confirm'd by constant Custom.

Tho' here he nam'd a 3d. Act, his meaning here was plainly of the two Statutes 25. E. 3. and 25 H. 8. but 'tis far from being clear upon comparing those two Statutes, that Succession to the Crown, and to private Inheritances, is the same way: for that of the 25. of E. 3. shews a manifest Difference; and this Sir Thomas is so sensible of, that he is forced immediatly to contradict

f. 274. his first Observation by his second, That the being Born out of the Kingdom does not take place in the Successions to the Crown.

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But even that Observation may be excepted against, and that upon the Law of the 12 Tables, from whence he would have under the word *Infants* or Children of the King, to be comprehended Grand-children, tho' extrafamiliated ; that Law speaking of *Deeds in favour of certain Persons not confin'd to certain Degrees, but extending to all descending of the same stock* : which puts not only all Children into the same Capacity of succeeding, as the Civil Law did, but allows Children in a more remote degree to be equally entitled to the Privilege of the Stock or Royal Family : And what advantage could Sir Thomas or his Editors get by that ? In truth no more than a justification of those *Laws of Succession*, which in Sir Thomas his Words, tho' far from his Sence, have obtain'd from the beginning of the Kingdom, and have been confirm'd by constant Custom. This shews that the Nation could not have been charged with Perjury, as Sir Thomas supposed, if after the Oath Enacted 26^o. H. 8. in Pursuance of the Act of Settlement 25^o. the People should, by virtue of a subsequent Act of Parliament, have sworn to receive a Successor Nominated and appointed by Queen Elizabeth.

But Str Thomas has not yet done with the Statute of 25. H. 8. on which, as if it were the last upon the Subject, he makes the Hinge of the controversy to turn.

He takes notice of the Preface, as he, or his Translator, calls the Preamble, which says, 'tis a Natural inclination of every man to Provide for the Security of his Succession. Therefore the Lords and Commons beseech the King, to provide for the perfect security of him, and his most lawful Successor and Heirs. They reckon'd it part of his Regal Office

f. 274.

f. 141.

f. 405.

406.

407.

408.

fice to settle the *Affair of the Succession*, and to declare his undoubted Successor, and say, they could not doubt of his *Princely Heart, Wisdom, and Affection*, to provide for the security of himself, and his Heirs and Successors, in whom also is united and knit, the only meer Inheritance and Title of this Realm, without contradiction, &c.

Several weak Inferences Sir Thomas makes from this Preamble, but that which seems of most weight, and which he places in the Front, is the latter part, which he represents as if the Inheritance were united and knit to H. 8. and his Heirs.

This, says Sir Thomas, is the chief Hinge upon which this whole controversy turns, and upon which the greatest Stress of it lies.

But he artfully leaves out the word *Successors*, which by all that went before in former Reigns, and by the manifest intent of that Statute, was a necessary word: for if they thought no Man could be *Lawfull Successor*, who was not so by a Strict right of descent, what need of such Sollicitouines to have a Successour declared?

The rules of Succession in private Inheritances were certainly known, and invariable: but the Custom of the Kingdom for the Succession of the Crown, having left a Latitude of Election to the States of the Kingdom, while they kept to the Regnant Family; Men have endeavoured to Frame Schemes of descent to suit with such Variations. Sir Thomas, not minding his Assertion, that the Succession of the Crown descends the same way that other Inheritances do, by the Law of God, Nature and Nations, admits three differences; which shews the way, or course of descents is widely different.

1. In the case of Foreign Birth, already mentioned.

2. In case of Forfeiture or Proscription, the consequence of which he understands no better than other Points of our Law.

3. "A Third difference he finds; in the Succession of private Men, the Brother succeeds not the Brother, nor the Sister to her Brother or Sister, unless they are of whole Blood by the Fathers side, that is, unless the Brother and Sister be altogether of the same Stock, and related as well by the Father as by the Mother. For if these Brothers be only of the same Blood by the Fathers side, that is, if they are Born of different Mothers, the Succession devolves first, by the common Law of England, to the Uncle, before it goes to the half Brother.

"But we see it is otherwise in the Succession of the Crown. For tho' the Brother or the Sister be only of the same Blood by the Father's side, and not the whole Blood, they notwithstanding succeed to their Brother.

"Thus before the Conquest, the Sons of King Edward which he had by several Wives, nay by Concubines, succeeded one to another, to wit Edmund succeeded *Athelstan*, and after Edmund his Brother *Edred*; to *Edmund Ironside* succeeded *Edward*, tho' begotten by their common Parent *Ethelfred* by another Wife, to wit, *Emma*, Daughter of *Richard Duke of Normandy*. And lately *Queen Mary*, succeeded E. 6. *Queen Elizabeth* succeeded *Mary*; tho' we all know that they had different Mothers, to wit *Jane Seymour* the Mother of *Edward*, *Catherine* Daughter of *Ferdinand the Catholick King*, was *Mary's* Mother, and *Ann Bullen*, Queen *Elizabeth's*. Were

f. 247.

Were it not to be thought, that the Non-juring Editors wanted all Sense of Shame, or Common understanding, to publish such incoherent Stuff, to justify their obstinate adhering to Conclusion contrary to their Premises.

They must Imagine, that if their Prince in the Clouds, were Begot by any Body, during the Coverture between the late King James and his Queen; He had an indefeasible Right to the Crown, by the law of God, Nature and Nations. But their Oracle tells them, none of these are to take place, any further then they Agree with the law of the Land; according to which; not only the Half-Blood may be preferr'd to the whole, but even Bastard Issue, to them who, by the Law of God, Nature, and Nations, would have the right to a private Inheritance.

Sr. Thomas agrees, the Succession of the half Blood, and Illigitimate Issue, is by the Law and custome of this Land, and 'tis Demonstration, that this can be no otherwise, than as in such cases, it warrants, National Settlements of the Crown.

Thus after that Act. 25. H. 8. on which Sr. Thomas supposes the Hinge of the Controversy to turn; by (a) Authority of Parliament, 28^o H. 8. c. 7. 8. the Marriages with Queen Catherine, and Queen Ann, are declared unlawful, and the Children illegitimate; the Crown is settled upon the Issue of the Body of Queen Jane E. 6. th's Mother, for want of such Issue, to such Person and Persons as the King should appoint by virtue of the said Act: And it pro-

vide

vides, that if any should attempt to succeed contrary to that Settlement, they should lose and forfeit all Right Title and Interest, that they may claim to the Crown, as Heirs by Descent, or otherwise. The Reason for reserving an appointment to the King is very Remarkable; because, as the words of the Statute are, "if such Heirs should fail, as God defend, and no provision made in your life, who should Rule and Govern this Realm; for lack of such Heirs, then this Realm, after your transitory life, shall be destitute of a lawful Governour: or else per case incumbered with such a Person, that would covet to aspire to the same, whom the Subjects of this Realm shall not find in their heart to Love, Dread, and Obediently serve as their Sovereign Lord. The Estates of the Kingdom promise that they will adhere to and obey, the Person so nominated and appointed by the King, as their true and lawful Lord, as freely as if he were the Lawful Heir, And all offenders against that Act, their abettors, Maintainers, Tutors, Counsellors, and Aiders, were to be deemed and adjudged High Traitors to the Realm; according to which it is very Evident,

1. That no Person would have had Right to Succeed, who was not within the express limitations then made; or the future Provision by Virtue of the Authority of the Parliament.
2. If any Person should aspire to succeed from a pretence of Proximity, or the Settlement I.H. 7. he would have been an Incumbrer, or *Usurper* of the Realm; unless the Subjects should find in their hearts or freely consent, to serve him as their Sovereign Lord; that is, till he should be Elected King.
3. That

3 That till the *Election* of another King, there would be a *vacancy*; and who ever would pretend to be King, till *Elected*, was punishable as a *Traitor to the Realm*.

Sir. T.C.F. Sir Thomas Craig, argues with no more strength than usually he do's; when he says,
136. " Now by these words a free power is not
" given to prejudice the *true heirs and Successors*; and further, a privilege conceiv'd in
" general Terms, ought always to be Construed
" according to Equity and Natural Reason; neither
" by Privileges which are granted Contrary to the
" Common-Law, is Liberty allow'd for Trustees
" to extend them how far soever they please.

If the Common-Law of England, had ascertain'd the Successor, there had been no need of the Act; and whatever Limitation the Constitution might put upon the trust which the States repos'd in H. 8. they manifestly were of Opinion that he might reasonably, set aside any Man who pretended to the right.

(b) 25. H. 8. 4 () By Authority of the same Parliament, the *Illigitimations* of Mary and Elizabeth continued; yet if the King, and Prince Edward should Dye without Heirs of their Bodyes, the Crown was to go to the *Ladyes Successively*: But their Respective Interests, to Determine, if they did not perform such *Conditions* as the King should appoint. And in Case of Failure of Issue, or in performance of the *Conditions*, least the Realm should be *Destitute of a Lawful Governour*, the Crown was to go as the King should appoint, in such manner as is there Directed.

Then

The (a) Settlement by Authority of Parliament, 28. H. 8. was by the same Authority confirmed in Substance 35^o. with a repetition of the Inducement to place in the King a Power to appoint a Successor. But who ever should have been so appointed, or for want of such appointment, Elected by the Estates upon a vacancy, according to a Statute 25. H. 8. and that above cited i. H. 7. would have become a Natural Lord.

That, what I have observed in Acts of Parliament in the time of H. 8. proceeded, not from the prevalence of any party, or Compliyance with the King's Humour, but was the settled Judgment of the Learned of those times, how much severer divided in other matters; may appear, by some passages between the Learned Sir Thomas Moore, who had been Chancellor, and Ryche, then Solliciter General.

Sir Thomas being a Prisoner in the Tower, for owning the King's Supremacy, Ryche, to perswade him to comply, used this Argument; (b) Inter
b) If says he, it should be enacted, by Authority records de
Parliament, that I should be King, and that Anno 27.
any one should deny it, it should be Treason, Cust. us
would you say that I were not King? For ceterorum q
uin, adds he, in my Conscience this would be no Capital
ffence, but you would be obliged to say and to Justice &
me for King, because your own consent was Attornas.
and by the Act of Parliament.

Sir Thomas answers, it would be an Offence if set Aubo
ritate Parl

c. Si diceret non Reg. Vid. etiam Bp. Burnet's Hist. of the Ref. 1. vol.
34.

he should say he were not King, because he should be bound by the Act; for that he might give his consent to that matter. This, he said, was a light cause.

But what if a Parliament should enact, that God, should be God. But says Riche because your case from God is Sublime, I will propose to you this of an inferior Nature: You know our King is constituted Supreme head on Earth of the Church of England; and why ought not you, Master Moore so to affirm, and take him, as well as in the Case above, of my being made King. In which Case you grant, that you would be Obliged to Affirm, and to

(a) Quia me to be King. Moore says, Rex per parl. sicut potest e. par King may be made by Parliament, and may be privy by Parliament, to which Act, every Subject being present in Parliament, may give his consent.

But to the case of the Primacy he cannot be obliged because to that he cannot give his consent in Parliament, &c.

'Tis observable, that tho' this is set forth in the Indictment against Sir Thomas Moore, it is used as proof of denying the Supremacy; without any Agravation from what he says of the Power of a Parliament in the present question.

(b) 1543: E. 6. (b) succeeded H. 8. according to Parliamentary Settlements, without any formal Recognition. Nor was (c) Mary his half Sister who succeeded him, recognized; but her Parliament thought it for her honour to take off her Illegitimation, Tho' that was not necessary give her a right to the Crown: Nor did the Parliament use any expressions whereby she might seem to think so.

When she came to Marry Philip King of Spain, they fully asserted their rightfull Power; all the Marriage Articles being Settled by (a) Authority (a) Statute of Parliament: By that Philip is made an English i.m.O.2. King. (b) Another Parliament makes it For- (b) i. C. ture of Goods and Chattles, and Perpetual 2.P. m. c. • imprisonment the first time, and High Treason. The Second, after a former Conviction, Malici- ously to maintain, that either of them ought not to joy the Stile, Honour and Kingly Name.

Her right was founded upon the express Li-
itation to her by Authority of Parliament, and
her Husband's, not (c) in Marrying her, but the (c) 1558.
consent of Parliament.

Upon the same right her half Sister Elizabeth succeeded her. By that Good Providence which often appear'd for her, Mary dying (d) while (d) Cam. Parliament was sittng, the States, with gene- den. Eliz. consent, decreed Elizabeth to be Proclaimed True f. 12. & Lawfull Heir to the Crown, according to the Act of Succession, 35. H. 8.

And in the Act of Recognition, she is declared, (e) Stat. their Rightful and Lawfull Sovereign Leige (e) Stat. Lady and Queen. 1. Pl.c. 2.

Soon after this, in a letter written with her hand (f) to Ferdinand the Emperor, she tells him (f) Cam. that she by God's goodness succeeded her Sister, by Act of Inheritance, and consent of her Subjects.

Tho' she had sufficient opportunity to have secured an Act of Parliament to take off her legitimacy; she seemed with Wisdom to de- line it.

1. Because the Authority of Parliament, under which she Claimed, was more generally acknowledged in those days, in Relation to the Succession of the Crown, than in voiding or confirming Marriages, which has been held a Spiritual matter.

2. To admit, that she owed her Crown wholly to the Authority of Parliament, could not but be more Popular, than to pretend to it by right of Blood,

(a) Four. In (a) the 8th. and 9th. of her Reign, the Lords Addressed to her, that a Successor might be appointed in Parliament, least God should call the Queen, without certainty of Succession: and they affirm'd, that the not granting their request would leave the Realm without Government.

(b) Stat. In the (b) 13th. of her Reign it is made Statute, during her life, and forfeiture of Goods and Chattles after her Death, to deny the Power of Parliament, to limit and bind the Crown, at the descent, Limitation, Inheritance, and Government thereof: And a penalty is set upon them who should affirm, that any but the Issue of the Queen's body, had right to Succeed after her.

For any one who expected the Crown, pretend to it while she lived, is made Disqualified during Life only: But by a (c) Subsequent Statute, aproving and explaining the Voluntary Association of the Subjects that year, every such person is Excluded and Disabled for ever.

(d) C. and at (d) the time of giving Judgment against Elizabeth.

Mary Queen of Scots, if we may credit accounts after her Son was K. of Eng. it was declared to be without Prejudice to her Son; this could not hinder the operation of Law upon that Statute: And I would gladly know how he could have any Right, Prior to the Declaration in his first Parliament, since he had no pretence as a Special Heir, under any Parliamentary Settlement then in force.

Upon the Queen's Treaty of Marriage 14^o of her Reign, with the French King's Brother, she Declared (a) that She could not grant, without the assent of the States of the Realm, that he should be Crowned after the Marriage.

(a) Camden f. 160.

An 1571.

14 El.

In (b) an Information in the Exchequer 21^o. (b) Cokes entries f. of her Reign, upon which Judgment was given, with the advice of the Judges of Both Benches, 373-380. Lands are said, after the Death of E. 6. to have come to Queen Mary, as his Sister and Heir, as in Right of the Crown; and so from her to Queen Elizabeth. In both which instances, according to the Judgment of that time, the Rightfull possession of the Crown, made them Heirs to their respective Predecessors: Notwithstanding the half Blood of both, and the continuing Illegitimacy of one of them.

That (c) J. i. could not Rightfully Succeed that Glorious Queen without an Election of the States of the Kingdom, had been declared with sufficient Authority, in her time, and in the time of H. 8th. and, without such Declaration, would appear by the observing how the Law stood, and was taken in all former times.

(c) An 1602.

But what ever right was ascribed to him after he got Possession; his party here found it requisite to set (d) up a Will or Nomination of Queen Elizabeth, to Facilitate his accession to the Throne.

(d) vid. Camb. Eli.

& Wilson's Hist. of Eng.

Then with a new strain of Loyalty, Judges, Lawyers, and Juries, concur'd in making attempts to prevent his coming to the Crown, Treason; the like of which, with all its Circumstances, had not been known in any Age of this Monarchy.

Tho' there had been Treason against W. 1. before his actual admittance to the Crown, it was as has appeared above, after a National Settlement upon him by name: This was the case of the unfortunate, *Lady Jane*, and others who set her up against *Queen Mary*. Yet that Compliment to J. 1. was but Suitable to the Flattering *Act of Recognition* 1^o. of his (e) Reign: According to the preamble of which, Immediately upon the Decease of *Queen Elizabeth*, the Crown did by *Inherent Birthright*, and *Lawfull*, and undoubted Succession descend and come to him; a Lineally descended from *Margaret Daughter to H* 7.

However, that Parliament made no Law in the matter, and by good Luck, left the Constitution as they found it: For they made no Settlement of the Crown, onely offered that *Recognition* as the first Fruits of their Faith to him, and his *Royal Progeny* and *Posterity* for ever. Which if it had been a Settlement, would amount to no more than what had been usual in former times; for Parliaments to make a branch of the Royal Family, a new head of future Successions: But by this any one of the Issue, or *Posterity*, stood fair for an *Election*.

Yet, possibly, the Parliament had not been so forward with these Fruits of their Loyalty, but for his Speech to 'em wherein he says.

(a) Ever

(a) vid.
King

(a) Every King in a Settled Kingdom is bound to observe the passion made to his people by James his Laws, in framing his Government agree-works. able thereto. And a King Governing in a settled Kingdom, leaves to be a King, and Degenerates into a Tyrant, as soon as he leaves off Governing according to his Laws. In which case the King's Conscience may speak to him, as the poor Widdow said to Philip of Macedon; either Govern according to your Law or be no King.

The Parliament take him at his word, and grafting upon it, says (a) his Majesty hath vouchsafed to express many ways, how far it is and ever (a) stat. shall be from his Royal and Sincere care, and Ef. I. F. 1. fection to his Subjects of England, to alter or innovate the Fundamental, and Ancient Laws, Privileges, and good customs, of this Kingdom. Whereby not only his legal Authority, but the Peoples Security of Lands, Livings and Priviledges, both in general, and particular, are preserved and maintained. And by the abolishing or altering of which, the it is Impossible, but that present confusion will fall upon the whole State and Frame of this Kingdom; where, in as Modest Terms as they could, they bid the King, at his peril, to violate the Fundamental Laws, on which his Regal Authority depended, as well as their rights and priviledges.

That the Non-jurors may see what a powerful Advocate they have chosen in Sr. Thomas Craig, I must recommend to their Consideration what he says in the Cases of R. 2. and E. 2. whether he allows, that if they had broken the Contract between them and the People, any powers on Earth, might judge them; and if there be any judges, how they ought to proceed.

Sr. T. C.
of the Sher-
iff f.
329.

" I know, says he, it has been Disputed by some Learned Men, whether or not a Tyrant is to be judicially try'd, or at least to be cited, before lawful arms be taken against him. In Case a Tyrant has an Army, if he keeps all the Castles and other Strong Holds, with Garrisons, so that *He can do Mischief* to many, and even the wisest of them, and among the rest Solon, assert, that Arms may lawfully be taken against him, tho' he be neither cited nor Condemned. But if he be ready and willing to undergo a Tryal, and will Suffer himself to be judged according to the Laws of the Country, they Act against the Laws of God and Nature, who take upon them to punish him without Citation and uncondemned.

" But this Richard was kept in a Publick Jail, Defitiate of Arms, Men, and all Guards and Garrisons; and who, had he been allow'd a fair and just Tryal, could have made a good Defence for himself; and overthrown all the Calumnies of his Adversaries, or retorted them upon themselves.

" The same thing may be say'd of, the De-position of E. 2. who was Crush'd merely by the envy of the Peers, because his expedition against the Scots was so very unsuccessful, being guilty of no Crime, that is to be found upon Record, or of any Oppression of the Subjects.

Not hereto enquire, into the Grounds of the respective Judgments nor to Enquire how an unsuccessful Expedition should raise envy; can Sr. Thomas's Admirers say, that any thing required by him

was wanting, to authorize the judgment of the States of this Realm, upon King James's abdication? Or can they henceforward have any advantage of the matter, they would have thought worthy of Observation, upon Sr. Thomas's Declining against Episcopacy?

Here, say they, it is worthy of Observation, f. 358.
 "that the Doctrines taught, the Principle laid ^{In Mar}
 "down and pursued, and the truths asserted
 "in this Treatise, are not the work of some
 "Tory; some High-flying Churchmen, but of
 "one whose *Byass* seems to have been another.
 "may.

Indeed it is apparent enough, that, whatever he may say in Fits of *Loyalty*, in his *lucid Intervals*, when he returns to himself, his Principle, is as much against the suppos'd Rights of Monarchy, for which he is produced, as his more Learned and Judicious Countryman Buchanan.

'Tis certain Sr. Thomas has overthrown the Non-juring cause, by allowing a Judgment to the States, in the case of *Balol*, whom he will have rightfully Disown'd; and that if R. 2. and E. 2. had been guilty of all which had been alledged against them, and formally cited, the judgments against them would have been valid.

In truth the methods which he uses to maintain an Argument, contrary to his *Byass*, are so absurd, that his secret aim might seem to be, to wean Men from such Follies of Bigotry.

C H A P. XLI:

The nature of the Scotch Succession to their Crown, of their Traditions and Historians; and Demonstration upon several accounts, that the Divine-right there, has followed, and not led or Govern'd the Civil.

The notions propagated from the Authorities of Sr. Thomas Craig, and Sr. George Machenzy, and countenanc'd by a Scotch *Act of Parliament*, render the Consideration of their Regal Succession, and the pretended rule for it, material, I cannot say necessary, because one would wonder how such absurdities should ever become, as it were, National, and much more how these Spurious Reliques, should still be carryed about in solemn procession, after both Nations, have with the greatest Solemnities, and

(a) *Sr. G. Sanctions*, absolutely renounc'd them.

M's. That Sr. George Machenzy and Dr. Hicks (a) have printed, with great applause, an *Act of Parliament*, cannot be passed in Scotland, which reciting,

debarred. "That the Kings of that Realm, deriving An. 1684. "their Royal power from God Almighty alone,

(p. 142. "do lineally Succeed thereto according to the

(b) *Jovian known Degrees of proximity in Blood*, which "cannot be interrupted, Suspended or Diverted "by any Act or Statute whatsoever, and that "none can attempt to alter or divert the said "Succession, without involving the Subjects of that "Kingdom, In perjury &c.

"Recognizes, acknowledges, and declares, the "right to the Imperial Crown of that Realm, "to be, by the inherent right, and the nature of "Monarchy, as well as by the Fundamental and

"unalter-

"unalterable Laws of that Realm, transmitted
"and devolv'd, by a lineal Succession, according
"to proximity of Blood.

"That upon the Death of the King or Queen
"who actually reigns, the Subjects of that King-
"dom are bound by law, duty and allegiance,
"to obey the next immediate and lawful Heir,
"either Male or Female, upon whom the right
"and administration of the Government is imme-
"diately devolv'd.

"And that no Difference in Religion, nor no
"Law, nor Act of Parliament made or to be
"made, can alter or divert the right of Succe-
"sion, and lineal descent of the Crown, to the
"nearest and lawful Heirs, according to the
"degrees aforesaid. Nor can stop, or hinder them,
"in the full, free, and actual Administration
"of the Government, according to the Laws of
"the Kingdom.

That of the Administration is so qualifyed, by
adding the Laws of the Kingdom, to this Divine
unalterable right, that the Scots, if we may credit
their own writers about their Constitution, as
Cicero said of the Epicurean notion of the Deity,
do, nomine ponere re tollere, allow it in Name;
in reality take it away.

But Sr. George Mackenzey or other Penman
of that Act, did not herein consult their O-
racle Sr. Thomas Craig, who is positive, that a
Mohametan or Madman, may, be debar'd from the
Administration.

However with Sir Thomas and the contrivers
of that Statue, the Succession, according to the
Degrees aforesaid, is sacred and unalterable, and
yet this Rule will want some infallible interpreter,
to be a sure guide to Men's Consciences.

1. It seems only to Regard the use it was then to serve, which was to deter People from attempting to exclude the then Duke of York who stood next to King Charles the 2d. whose title was undisputed; and therefore places the Right in standing next to the King or Queen, who actually

The Just Reigns: But this is very wide from Sr. George right of MacKenzi's sacred rule, of always attending to Monarchy the next of the Family or who represents it.

p. 24.

2. Notwithstanding the plain intention of applying their rule to the succession of Brothers, as if such very learned Men were infatuated, when they would make Religion a Stalking Horse, to drive Men into the party of a Popish Successor, they left their rule as uncertain as they found it: for when their business was to take in Collateral as well as Lineal Succession, they either seem'd not to understand the most obvious difference, or los'd it in a blind zeal.

The Degrees aforesaid, relate only to a lineal succession by proximity of Blood.

But they never thought of a Succession in the same Degree, which is not lineal but collateral, and where the proximity is the same.

'Tis evident that in Collaterals, proximity, cannot be the standing rule: because in the instance of Brothers all are equally near one another: But the eldest, is to be preferr'd as the most Worthy of the blood, and the younger Uncle, without a right of Representation, which differs from the rule lay'd down in the Act, is nearer in blood than the Son of the Elder.

3. Tho' the Scotch Parliament go a note beyond Sr. Thomas Craig, upon the point of Administration, they seem to Transcribe his Errors about

Littleton
Sect. 5.

bout the rule of descent, or think it piaculiar to appear better to understand it.

'Tis certain so little did Sr. Thomas understand the Law of England, the chief Fuedal Law worth his Enquiry, as, upon Doleman's urging an express Agreement between Robert Eldest Son of W. I. and Rufus, by which Robert should have succeeded of Succession f. 362. next after the Death of Rufus; to say,

"I answer, that the publick right is not to
"be altered by such private Agreements, neither
"ought the rightful Succession in Kingdoms to be
"overturn'd by such pacts or Agreements: Rufus
"being Dead Henry Succeeded to him, because
"by Law an inheritance Descends, but do's not
"Ascend.

Spectatum admissi risum teneatis amici?

What could not Rufus Succeed his middle brother, because of the maxim against the Ascent of the Inheritance?

But this 'tis, with profound skill in the Feudal Law, not to understand, that there's no Ascent between Brothers, they standing in the same degree: Nor that only Ascent in the ^{Inst. f.} ^{11. a.} right line, is prohibited, but not in the Collateral.

Sr. George Machenzy and others, who would Establish a Divine-Law, about Degrees in Blood, which as appears, their Act of Parliament left as instable as it was before; seem no great Politicians in putting themselves under a necessity of hollowing all their fables, about a continued series of Successions for above 300 years before our Saviour.

In the 13th. of E. 2, the People of Scotland assured the Pope, that in that part which they possessed in Britain, at the time of their owning the Dictates, of some pretended Antiquaries,

113 Kings of their own Royal Family had Reign'd, without one Foreigner intervening.

This was a sufficient stretch for that time : But they never thought of adding, that all these Succeeded by a *Divine unalterable right of Proximity*; it was enough for their purpose, if they could prevail on the *Pope*, to but seem to think that so many Kings of their own Royal Family, had reigned in this *Island*, and to Curse them who would not believe it : I suppose they took into their account the 3. Kings, who reigned together as *Roytelets* under our King *Cnuce*: but from which of the 3. they derive the unalterable Succession, or why more from one than from another, I may leave to the determination of Dr. *Hicks*, and other learned Non-jurors, I hope I may, without imputation of the Crime of *lese Majest*y, except against the *infallible Tradition*, 13^o. E. 2. since Sr. *George Machenzy* Encounters it with a quite different *Infallible Tradition*, in the bead-roll of Kings repeated at Coronations ; *Vid. the Ge.* for by that time Sr. *George* had committed *nealogy* in this to writing, they had quite loss'd about Sr. G. M's. 18. of their Kings : Which any Man may *Antiquity* observe by comparing Sr. *George*'s list, from the &c. visionary recital of a Second sighted *Highlander*, with the Traditional Number in the 13th. of E. 2.

Since the time of E. 2. new sprung Tradition (a) Right has invented a law of King *Kenneth* the 3^d, of the Suc. (a) that upon the Kings Death, the next Heir of reffun de whatsoever Age, should Succeed; by Vertue fended p of which 'tis held, that the Scotch Nation swore 147.

(b) to own allways the immediate Heir.

(b) b.p. This *Kenneth* was the Son of *Alpin*, who as 196. I shew'd before, was the first Scotch King, that they

they can Reasonably pretend to have settled in Britain.

Concerning his Laws, I desire the Bishop of Carlisle may be heard, who is as favourable as possible no their inventions.

(a) Of Mac. Alpin's Laws, I shall not repeat (a) Scotch
"the Reflections made upon them, by a late Hist. lib.
"Learned Prelate of our English Church, but thus p. 254.
"much the most judicious Civilians of Scotland,
"have allow'd me to say; tho *Hector Boethius*,
"and others, be exact in Registering them, 'tis
"certain their whole authority is founded on
"Oral Tradition, if not a more Treacherous
"bottom; Since before the days of *Malcolm*
"Canmoir, who was contemporary with *William*
"the Conqueror, the Scots had no sort of written-
"law.

Sr. George Mackenzy agrees that from Kenneth the 3d. to King Charles the 2d. inclusive Right of
of 31. Kings, they have had 5. who came to the Succession de-
to the Crown against that supposed Law of fended p.
Kenneth, viz. Constantine the Bald, Grimus,
Mackbeth, Donal Bain, and Duncan the Second:
but whereas the Successions of their Kings, have
been pretended to be exactly preserved, by sa-
cred Oral Tradition, Sr. George, with all his skill,
is forced to quit the Tradition, as to the Successions
and to keep to it only for preserving the Sacred
descent.

And yet if Tradition fail here; whence had
their Historians the number of their Kings?

Bishop Stillingfleet, having observ'd that the Antiquity
Traditional Genealogy omits Four of their Kings, of the Roy-
betwixt Malcolm Canmore, and St. David, Sr. al life far-
George says t'was very justly for Donald ther clear'd
the 2d. was Malcolms brother, and Duncan his p. 123.
Bastard

Bastard, Brother, none of whom had right to Reign: and tho' Malcolm had two Elder Sons Edgar, and Alexander the 1st, who reign'd successively, yet they having no Children of their own, the Succession did devolve upon Sir David the youngest Son. The Lord Tarbat, giving the descent of King Charles the 2^d. leaving out Malcolm the 4th. William 2. Alexander 3. &c. and thus each makes the Tradition, very wide of his Hypothesis: But the wisest lessen the number of Kings, that the fewer variations from the supposed rule of Proximity may appear.

- P. 124. Sr. G. Acknowledges, Bishop Stillingfleet has Discovered an Error which he thinks of the writer or in the *Highland Genealogists Memory or Expressions*, who inserts none betwixt Malcolm the 2^d. and Kenneth the Son of Alpin, whereas the Historians insert 13.

Since Sr. George here corrects the tradition by the Historians, or else gives up 13 of their Kings at once, whence had the Historians their light? Tradition must no longer be pretended to countenance them. I need not here compare their most receiv'd Historians, with the Scotch Chronicle of Mairos, which begins with as early an account of their Kings as I could with any colour; and yet we find not there any one who had so much as the Name of a King of the Scots, before Eugene or Ewan who dyed in the year 741. from that time till the Deposeing and Murders, of several of their Kings are mention'd, but nothing of any rule or descent, except that notice is taken when a Son or Brother succeeded.

But the relation which one King stood in to another, must generally have been supplyed by the imaginations of Men; since

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since the 13th of E 2. when 'twas thought enough to be of the Scotch Royal Family.

And if I be not much mistaken, they who are most Zealous for a strict Right of Descent in the Scotch Line, must take up with the English Constitution in this matter, as they have in other particulars; or must own that their *Bruce*, and all his Descendents, were Usurpers, and consequently that the *Fee* of the Kingdom of Scotland, has been consolidated to the Crown of England, ever since the Reign of Edward *Baliol*.

Yet I shall shew, that they have had Legal and Rightful Kings longer; tho' upon grounds which they may not be willing to allow of.

I must own that I cannot produce such Authentick Evidences of the Right of their Kings, as I have done for the English Monarchs: The Scots having no Records of the times; and if we believe the greatest Supporters of their Fables, all their Historians conspire together in advancing the power of the People.

The Bishop of Carlisle, says of John Major,

Scotch Hist. 1 b.

' In the Case of *Baliol* and *Bruce*, he maintains the Power of the People, and gives great allowances afterwards to the Parliament, in disposal of the Crown.

p. 103.

He writ

4. 1513.

5 J. c. 5.

ib. p. 104.

Yet Bishop *Lefsy*, says of that Historian, ' he was every where more studious of Truth, than of Eloquence.

Our Bishop says of *Hector Boethius*, ' His Principles in Polity, are not better than those of *Buchanan*, whose *Jus Regni*, is effectually confirm'd, by what he Relates of the making and deposing of Kings and Bishops, by the sole creating power of the People.'

Bishop Lesly's first 7 Books, he says, are ' an Abstract of Boetius, whose very words are frequently retain'd.

Defence of the Anti-quity. p. 40. Of Bishop Lesly, Sir George Macbenzy says, he, and Archibishop Spotswood, are Men ' who have written their History with great Judgment and Truth, and it cannot be imagin'd that they, who were banish'd for Loyality, and suffer'd the loss of all, for their perswasion, would have asserted a whole bundle of Lyes, or a continued Romance.

p. 41. Nay, Lesly in his Preface to the Nobility, says, his History had been drawn with all the exactness, that the Truth of History requires, from the ancient Records of the Kingdom, and the Monasteries.

Which is Demonstration, that if any thing in Lesly contradicts Sir George Macbenzy's Notion of a Divine Right, subject to no Humane Law; his Admirers must be contented with such a Right as goes along with the Civil.

Who would think that the Bishop of Carlisle should give this attestation to Buchanan?

p. 144. ' He is not to be reputed the first Parent and Founder of antimonarchical Principles in Scotland, since it can only be said of him that he receiv'd and improv'd the imperfect Notions of popular Government, which had before been started by Hector Boetius, and others, in their History of Fergus and his Successors.

Upon the Father of their Historians, Fordon, or his Continuator, we yet meet with no Censure in this Matter, and if I occasion any by citing them, or either of them, 'twill be no fault of mine.

If Verses writ in some of the M S. of Fordon, are true, he writ but Five Books of Sixteen,

but

but yet his *MSS.* with the Continuation, has obtain'd the Name of the *Scotcb Chronicle*, and as the Bishop of *Carlisle* observes, the black Book of *Paisy*; and all the pompous shew of Registers of their History, are but Transcripts of *Fordon* and his *Continuator*.

So far at least as Sir G. *Macbenzy* and the Lord *Tarbot*, use the whole *Scotochronicon* as *Fordon's*, it may be allowable for me; for such parts as they cite with his Authority, may be well us'd against them.

Before producing which, I shall shew that even the Oracle of the present *Non-jurors*, Sir *Thomas Craig* has, upon *Non juring Principles*, condemn'd the whole Race of the *Bruces* and *Stewards*, as *Usurpers*, who Succeeded contrary to the *Laws of God, Nature, and Nations*.

But as I have the highest Veneration for that Stock, to which we owe the Blessing of Her Majesty's Reign, I shall shew a Right of it to be Divine, upon a Foundation not to be shaken. As has appear'd from matter of Record cited above, our King *Edward the 1st.* in a *Parliament* of both Kingdoms, upon the Competition between *Baliol*, *Bruce*, and others, adjudg'd the Right to be in *Baliol*, according to the known Law of both Kingdoms; this was because *Baliol* had the Title of the elder Sister, and therefore, the Kingdom not being partible, he ought to have the whole.

Of this Sir *Thomas Craig* says, 'The dispute f. 3 15.
was between the Descendants of two
Sisters, of which *Bruce* only as being first Male,
pretended to have the preference in the Suc-
cession; and in those days the Prerogative of
the Male was not inconsiderable.'

Here Sir Thomas agrees, that Bruce's only pre-
tence was as first Male, and admits that he came
from the younger Sister.

But upon a Question concerning Descen-
dants from Daughters of John of Ghent, he is
positive.

f. 374.

' There can be no room for the Children of
' the second Daughter, in such things as admit
' of no Division, or cannot be shar'd, as long as
' there are Children from the eldest Daugh-
' ter.

f. 290,
291.

Before this, speaking of the Right of the
Scotch Line, as Descended from Margaret H. 71bs.
eldest Daughter, he had said,

' They who deny to the Off spring of Ma-
' garet, the Right of Succession to the Kingdom
' of England, have not only the Law of God,
' Nature, and of Nations, against them, and the
' Civil Law, but also the mature Judgment,
' and Determination of their own Kings.

Thus in his sense, Bruce Succeeded contrary
to the Laws of God, Nature, and Nations, and
the Civil Law of the Romans.

I agree that Bruce had the Crown contrary
to Law, not having had Investiture from the
Imperial Crown of England: yet I will shew a
good Title for the Stewards.

But that it may be seen what a Leaden Rule
Sir Thomas Craig makes the Law of God, Nature,
and Nations, which he is positive gives the
Right of Crowns to the eldest Sister and her
Descendents, I shall Transcribe part of his Book
of Homage, where he advances the Right of
Bruce above that of Baliol, Grandson to the eldest
Sister.

There

There Sir Thomas has this memorable pas. of Ho-
Homage. p.
sage.

363.

' But the English will say, that Edward pro-
nounc'd a very just Sentence, in adjudging
the Succession of the Crown of Scotland to
Margaret, eldest Daughter to David Earl of Hun-
tington, and her Off-spring, and rejecting
Isabel the second Daughter, who Married Ro-
bert Bruce Earl of Carric, and her Off-spring;
for there's no body who does not prefer the
first Born to the second in individual Fees, and
by consequence, the Off-spring of the first to
the Off-spring of the second. Altho' indeed,
most Men think, that this Sentence of King
Edward's, was according to Law; yet because
of his being corrupted, and receiving a Re-
ward for his Sentence, he ought not to have
been Judge.

This Objection against the Judicature, could
be none against the suppos'd Divine Right of
Succession; and yet the pretended Corruption, was
only a promise to perform the Homage before
due; and the Judge was the Person, whom God,
and the Law, had made to be Judge, with the
Assistance of his Barons, he being the Sovereign
Lord of the Fee.

' But, says he, if the Matter be throughly
canvass'd, perhaps it will be found, that this
Sentence was not pronounc'd according to
Equity.

Here he is more modest than ordinary,
qualifying his assertion with *perhaps*: But this
he would carry further from the pretended
Custom of the Kingdom of Scotland, which is
an averment contrary, not only to the Record
of the Judgment, declaring it to be according

to the Custom of both Kingdoms; but to those Authorities which shew that the Law of England, govern'd all the Customs of Scotland in the Descent of the Crown.

'Tis to as little purpose, that he mentions a Case determin'd in France, and the diversity of Opinions among Learn'd Feudists.

After citing a Text to his purpose, (from what Book of the feudal Law, he is silent.) His State of the Question and Resolution is as follows.

, That we may adapt this Text to our Hypothesiss.

‘ David Earl of Huntington and Chester, to whom as next of the Paternal Line, the Right to the Kingdom of Scotland, (the whole Offspring of his Brother William, being extinguisht'd) and it's Succession devolv'd, of which Succession a Woman, and those who Descend from her, are as capable as a M^r. He left two Daughters, Margaret, the eldest who Married Alan Earl of Galloway, of which Marriage, was Born Dornagilla Mother to John Baliol, afterwards King: The other was Isabella Married to Robert Earl of Carric; of which Marriage was Born Robert Bruce, Father to King Robert the 1st.

‘ The Question is, whether Robert Bruce, tho' Born of the second Daughter, yet the first M^r, or Dornagilla, Grandchild by the first Born Daughter, is to be preferr'd in the Succession to the Crown, which admits of no Division. In this Question the two great Lights of the feudal Law, Gerard, and Obert are oppos'd to one another.

To pass by his small mistake, as if David were E. of Chester, He agrees the Text does not express whether

whether the Son of whom the Question was, p. 366.
were born of the Eldest, or Second Daughter,
but says, there had been no place for Doubt-
ing if this Son had been Born of the Eldest.

'Tis more plain, that if what Sir Tho. represents
as *Text of the Feudal Law*, had been so, there
had been no possibility of a Dispute between the
two great *Lights*, whether the *Text* were thus or no.

And if 'twere thus, it goes no farther than that
ceteris paribus, if there be no other difference,
the *Male* is to be preferred before the *Female*.

But if the *Text*, or Opinion of the best *Com-*
mentators upon the *Feudal Law*, had imply'd, that
a *Male* by a younger Sister is to be preferred be-
fore a *Female* by the elder,

1. 'Tis more plain by the *Feudal Law*, that in
Matters Disputable, the Determination of the
Lord of the Fee in his *Supreme Court* is, and ought
to be, conclusive to all Parties.

2. The Rule of Judgment ought be the *Law*,
which he obtains in his *Court*: and consequently,
'tis to no purpose to urge any *Law* but that of
England. *Vid. Sup.*

3. As appears by *Glanvil*, according to the
Feudal Law received in *England*, *Baliol* by doing
Homage made his Right indisputable.

4. If E. I. had given Judgment in Favour
of *Bruce*, according to Sir *Thomas Craig* himself,
it would have been contrary to the *Law of God*,
Nature, and *Nations*; and without taking Ad-
vantage of his concession, it would have been
contrary to the *Law of God*, being contrary
to the *Law of England*, by which he had ap-
pointed the Judgment to be. However, for a
while, we may consider the *Bruce's* as Possessed
of the *Crown of Scotland* after *John* and *Edward*
Baliol, the Father and Son. K 4 R-

Lord Tar-
bot. Vin-
dication.

Sir G. M.
and L.T.

Fordon Lib
12. cap. 24.

Ai tract-
land. super
Statutum
Regni Sco-
tiae.

Robert, the first Son of Robert, Son to Robert Bruce, who was Competitor with John Baliol, had Issue, Margery (who Married Walter Steward of Scotland, never King) and David, afterwards King.

Before David was Born, as the Circumstances shew, according to Fordon or his Continuator,

" The Bishops, Abbots, Priors, Arch-Deacons, and Deacons, and the rest of the Prelates of Churches, the Earls, Barons, Knights, and the rest of the Community of the Kingdom, Met to Treat about the State of the Kingdom of Scotland, Ordained as follows, with the Assent of Robert, and Margery his Daughter, and Heir Apparent; That if the King Robert died without Heir-Male of his Body begotten, Edward de Bruce his Brother should Succeed in the Kingdom. If Edward should die without Heir-Male, then the said Margery should Succeed in the Kingdom, or other the King's Daughters, if they Married with the Consent of the King, and Kingdom.

Here was no Regard to any supposed unalterable Rule of Descent; for,

1. The Male more Remote was preferred to the Female next in Blood.

2. There was a great Restriction upon the Right of the Females, it being disallowed, if they Married without Consent of the King, and Kingdom.

David being Born afterwards, Succeeded according to this Act of Settlement. Still to follow the ~~Scotabronicon~~.

" After the Death of David, the three States of the Kingdom began to Treat in the Town of Linlithgow, about Creating a new King. " Whole

Lib. 14.
c. 36.
A. 1320.
Rize Cre-
ando facias

" Who
" Stew
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In no
individ
Fili &
Amen.
Dom.

" Whose agreeing Vote was to prefer *Robert filium suum Stewart*, King David's Nephew, according *um hereditarium & intentum* to his hereditary State, or, as he stood in the inheritance, and the intent of *Entails first talliorum*, made hereupon. But Lord *William de Douglas &c.*

" Earl of *Douglas*, opposed this Resolution, supported with a Military Force, alledging, that it belonged to him, on the part of the *Comynses, or Baliols*, to be rais'd to the *Royal Throne*: whom George of Dunbar, Earl of *March*, and John his Brother, Earl of *Murrey*, and also the Noble Knight, Robert de *Erskine*, openly resisted in this Claim. And the said *Douglas*, considering that he could not resist 'em, by the Counsel of the Prelates and Peers of the Kingdom, made a cession from his unadvised Presumption, where, nevertheless, as a good Expedient it was agreed, that *James de Douglas*, his Eldest Son and Heir, should Marry the Daughter of Lord *Robert*, the Future King, Lawfully Begotten. And the said Earl of *Douglas*, together with his Son, should humbly submit to the King, and obey him.

" And in the following Feast of the Annunciation of the Blessed Mary, *Robert Stewart* was Crowned at Scone with due Solemnity.

*Cessit sua
inconsulta
presump-
tioni.*

*Filius Dux.
Rob. Regis
Futuri de
legitimo
thore pro-
creatum.*

The Substance of what the *Scotocbronicon* affirmed of this Matter, is undeniably confirmed by an Act of Parliament made at the time, and given at large, and given by the Lord Tarbare, which follows in these words.

In nomine Sanctæ & individuæ Trin. Patris Filii & Spiritus Sancti, Amen. An. ab incarn. Dom. 1371. Secundum

*In the Name of the Lord Tat-
bat's Vin-
dication of
Trinity, the Father, Rob. the
Son, and Holy Ghost, 3 d. p. 9.
On the 27th. day of the
Month*

morem & computationem
 Eccles. Scoticane mensis
 Martii die vicefimo sep-
 timo, serenissimus Prim-
 eeps Dom. Rob. Rex
 Scotor. Illustris. Apud
 Seonam tempore sua Coro-
 nationis existens, assisten-
 tibus sibi Prael. Com. Bar.
 ac ceteris de Clero &
 populo Regni sui, post
 Sacra Unctionis & Coro-
 nationis sua peracta So-
 lemnia, factaque decla-
 ratione juris, quo idem
 serenissimus Princeps suc-
 ceſſit, & succedere debuit,
 Domino Davidi Regi
 Scotie avunculo & pre-
 decessori suo, tam proxi-
 mitate ſanguinis, quam
 ex quādam declaratione
 per quēdam instrumenta,
 confecta tempore inclytæ
 Memoriae Domini Ro-
 bertī Regis Scotie, avi
 & predecessoris ipsius
 Domini nostri Regis, ibi-
 dem exhibita, atque lecta.
 Nec non recepris Homa-

gii

Month of March, ac-
 cording to the Custom
 and Computation of
 the Church of Scotland.
 The most Serene Prince
 Robert, the Illustrious
 King of the Scots, be-
 ing at Scone at the time
 of his Coronation,
 the Bishops, Earls, Ba-
 roni, and others of the
 Clergy and People of the
 Kingdom assisting him,
 after the Sacred Solem-
 nies of his Anointing
 and Coronation were
 over, and a Declara-
 tion being made of the
 Right by which the
 most Serene Prince
 Succeeded, and ought
 to Succeed to Lord Da-
 vid, King of Scotland,
 his Uncle and Prede-
 cessor, as well by prox-
 imity of Blood, as from
 a certain Declaration
 by certain Instruments,
 made in the time of
 Lord Robert of Re-
 nown'd Memory, King
 of Scotland, Grand-fa-
 ther and Predecessor
 of our Lord the King,
 there exhibited and
 read. And also the u-
 sual

gii & Fidelitatis solitis
juramentis, ab ipsis Prel.
Com. Bar. & aliis de
Clero & Populo, ibidem
misit. in Coronatione Re-
gem Scotie ab aliis
prestare consuetis & de-
betis, volens more & ex-
templo celebris Memoriae
ijsdem boni Regis Ro-
berti avi sui, eoram cle-
ri & populo Successorem
& verum barodem su-
mum declarare ibidem, licet
de ipso clare constisset, ex-
istundans, & unanimi
assensu dictor. Prel. Com.
Proc. & Mag. indi-
cavit, asservit, &c. re-
cognovit, declaravit, &
voluit, quod cum ipsum
contigerit pro dispositione
divina ab hac luce mi-
grare, Dominus Joannes
fil. suus primogenitus,
Comes de Carric. & sen-
escalus Scotiae, erit,
& esse debet, versus &
legitimus heres suus, ac
sibi post mortem suam in
Rigno Scotiae, Domino
disponente, succederet, &
succedere debebit, super
solium

fual Oaths of Homage
and Fidelity, which
from of Old, used and
ought to be received
at the Coronation of
the King of Scotland,
the Earls, Barons, and
others of the Clergy
and People there: wil-
ling, after the Manner
and Example of the
said good King Robert
his Grandfather of Fa-
mous Memory, though Ex abund-
more than needful, to danti.
declare his Successor & Note Lord
true Heir, tho the same Tarbat
did clearly appear. the Sense
And by the unanimous of this, ma-
Consent, and Assent, of king it a-
the Bishops, Earls, Ba-
bundantly known by
rons, and Great Men, the Con-
made known, Assent-
ed and Acknowledged,
Declared and Willed,
that when it should
happen that he should
depart this Life, Lord
John, his first Begot-
ten Son, Earl of Car-
rick, and Steward of
Scotland, shall be, and
ought to be, his true
and Lawful Heir; and
God so disposing, shall
and ought to Succeed
him

solium Regni sui. Quā
 Declaratione sic facta per
 ipsum Dominum nostrum
 Regem de p̄fato primo
 genito & bærede, ex abun-
 danti, ut supra, unusquis-
 que Pr̄l. Proc. Mag.
 & al. ib. existentium,
 voce propriâ singulatim
 pro se, bæredibus & suc-
 ces. suis, afferuit, affir-
 mavit, declaravit & vo-
 luit, quod idem Dom. Jo-
 hn. post mortem p̄fati
 patris sui superstes & vivus
 sit, divinâ favente Gra-
 tia, futurus Rex Scotie,
 tanquam bæres legitimus
 ejusdem patris. Promit-
 tens quilibet bona fide,
 & manu in signum fidei
 dationis levata, quod eum
 pro Rege & bærede legi-
 simo ejusdem patris sui
 habiturus

him in the Kingdom
 of Scotland upon the
 Throne of this King-
 dom. Which decla-
 ration being so made
 by the said Lord our
 King concerning his
 foresaid First Begotten
 Son and Heir of a-
 bundance, or, though
 more than needful as
 aforesaid. Every one
 of the Prelates, Earls,
 Peers, Gentlemen, and
 others there present,
 one by one with his
 own Voice, for him-
 self, his Heirs and
 Successors, asserted,
 affirmed, acknowledged,
 declared and wil-
 led, that the said Lord
 John, after the Death
 his foresaid Father, sur-
 viving and living,
 should by the Grace
 of God be King of
 Scotland as Lawful
 Heir of his said Father.
 Promising each of them
 Bona Fide, and with
 his Hand lift up in
 sign of plighting his
 Faith, that he will
 hold him for King and
 Lawful Heir of his said
 Father

habitus erit, ipsum iu-
dabit, atque defendet,
contra quoscunque morta-
les, nec non sigillum suum
scripto seu juramento
super hoc fiendo appen-
dens, in signum suor. con-
sensus & promissionis
praedictor. cum ipsi super.
hoc fuerint requisiti. Qui-
bus recog. promiss. &
fidei datione, in consilio
Domini Regis sic pra-
missis & actis, idem Do-
minus Rex per venerab.
virum Magistrum Jo.
de Peebles Doctor. decre-
tor. Canon. Glasguen. Cler.
suum, proponi fecit in
publicum, qualiter ex a-
bundanti, declaravit praefat-
um Dom. Johan. fil.
suum primog. verum
suum heredem nunc esse,
& esse debere de jure.
Et post mortem suam, Reg-
ni Scotiaæ, volente Deo,
Regem futurum: Et
qualiter praefati Com.
Proc. & alii de consilio
affirmarunt, cognoverunt,
consen-

Father, and will Af-
fist and Defend him
against all Mortals
whatever; and also
Affixing his Seal to
the Writing or Oath
to be made hereupon,
in sign of his Consent
and promise aforesaid,
being so required.
Which acknowledgment

promise, and plighting of Faith, being so premised and prepared in the Council of our Lord the King, our said Lord the King by the Reverend Mr. John de Peebles, Doctor of the Decrees, Canon of Glasgow his Clerk, caused it to be proposed in publick, how of abundance, he had made known and declared, the said Lord John, his First Begotten Son, now to be his true Heir, and that he ought to be. And that after his Death, God willing, he shall be King. And how the said Earls, Peers, and others of the Council, Affirmed, Acknowledged,

The Lord Tarbot Translates it as if all this was done in Council; who only prepared it, as Eds. of the Articles. He calls him Clerk of the Records of the Dioces of Glasgow. It render'd to consent cord.

consenserunt, & fide me-
dia ut præmittitur promi-
serunt: Et quod popu-
lum cum Clero Convoca-
ri fecerat, ut in eorū
præsentia & de eorū consen-
sus unanimi, fieret &
publicaretur, Nec ali-
quis super hoc ignoran-
tiam pretendere posset
aliqua liter in futurum.
Tota autem multitudo
Prel. Com. Bar. & al-
tam Cleri quam populi,
unanimi voluntate, &
clamore consono, nullo
penitus reclamante, affir-
maverunt, ipsum Dom. Joh. tanquam primo-
genitum & bæred. Domini
Regis patris sui, suum fo-
re Regem futurum, ac
manu levata in Signum
fidei dationis, promise-
runt quod eum pro Rege
suo futuro, volente Deo,
habituri erint post mor-
tem patris sui, ipsumq; juvabunt. & defendant

de

ged, consented, & Faith
as is premis'd, being In-
terpos'd, Promis'd. And
that he had caused the
People, with the Clergy,
to be called together,
that in their Presence,
and with their unani-
mous Consent, it might
be done and Published.
That no Man might
for the future in any
wise pretend igno-
rance of this. And
the whole Multitude
of Prelates, Earls,
Barons and others, as
well of the Clergy as
People, with unani-
mous Will and con-
sonant voice, no one
in the least gainsaying,
Affirmed, Recognized,
and Willed, that the
said Lord John, as first
Begotten, and Heir
of his Father, should
be their future King,
and with Hand lifted
up in sign of plighting
Faith, promised that
him for their future
King, God willing,
they would have after
the death of his Fa-
ther, and him will aid
and

de rato
unque
bus sic
Com. c
us, sig
io app
pet. fu
nissimo
mis. au
subscrip
billions

Aff
pud A
na, me
supradi

Et
Rollo
D. pub
Notaris
dication
me non
levation
hannis
lo publi
venerab
tri Don
Sancti

de toto posse, contra quos-
unque mortales. Qui-
bus sic actis, prefati Præl.
Com. & Bar. ib. existen-
tiis, sigilla sua huic scrip-
tu apposuerunt, ad per-
pet. futur. memoriam in
affidionum omnium praes-
mis. una cum signo &
subscriptione publici ta-
billionis subscript.

*Acta fuerunt bac a-
pud Abbatiam de Sco-
ne, mense, die, & Anno
supradictis.*

*Et Ego Johannes
Rollo Cler. Moravien
D. publicus Autor Apost.
Notarius, præd. in-
dications, declar. affirms.
me non promis. manuum
levations, ac Mag. Jo-
hannis de Peebles popu-
lo publicationi, una cum
venerab. in Christo Pa-
tri Dom. W. Walt. & Pat.
Sancti Andr. Glasguen.
&*

and Defend with all
their Power, against
all Mortals whatever.
Which things so done,
the said Prelates, Earls,
and Barons there be-
ing, their Seals to this
Writing affixed for the
perpetual and future
Memory, in Testimo-
ny of all the Princes
together, and Subscri-
bed with the Sign of
the Publick Notary
underwritten.

These things were
done at the Abbey of
Scone, the Month, Day,
and Year above-men-
tioned.

And I John Rollo,
Clerk of the Diocese of
Murray, by Authority
of Apostolical Autho-
rity, Publick Notary,
to the said Indication,
Declaration, Affirma-
tion, and also promise,
lifting up of hands, and,
Mr. de John de Peebles
Publication to the Peo-
ple, together with the
Venerable Fathers in
Christ, the Lords Will.
Walter, and Patrick, Bi-
shops of the Churches of
St. An-

& Brechen. Eccles. Epis. ac discret. viris Dom. Johan. de Carick Canonicus Glasguen. W. Biggar. Rectore Eccles. de Errol Cancel. & Camerar. Scotie, Nob. viris & potentibus Dom. Thomae de Marr. Gulielmo de Douglass, & Roberto, Senescal. Comitisbus, &c.

St. Andrews, Glasgow, and Brecken, and the discreet Men, Mr. John of Carrick, Canon of Glasgow, Will. of Biggar, Rector of the Church of Errol, Chancellor and Treasurer of Scotland, the Noble and Powerful Earls, the Lord Thomas de Marr, William de Douglass, and Robert the Steward, &c.

Then the Notary says, He Sign'd with his usual Mark at the Instance of Lord John, the Lord the King's first Begotten Son, Earl of Carrick, and Steward of Scotland.

Upon so much as I have yet produced out of Fordon, and the Records, considered together, it appears beyond Dispute,

1. That the States of the Kingdom took to themselves a Power of Judging according to the intent of an Act of Settlement; The Words of the Act in Robert the First's time not going beyond the Person of Margery, though she should Marry with the Consent of the King and Kingdom.

2. As the Settlement went no farther, and 'tis a known Rule of Law, That nothing shall be extended by Equity, to the Prejudice of an Heir; if a new Consent of the States had not interposed, Douglass, if he had Baliol's Title, which

was

was not deny'd, would have come in by way of Remitter; as the Settlement which stood in his way was determined.

3. Whatever Douglas his Pretence might have been; here, according to the Notion of Conquest, was the Judgment of God against it: since, notwithstanding his arming to make good his Claim, he yielded to the Superior Force of the Great Men, who Oppos'd it.

4. There was an Actual Cession at the coming of Robert the 2d. to the Crown: and if notwithstanding that Cession, the Marriage of Douglas his Son with Robert's Lawfully Begotten Daughter restored a Right to his Family, he and his Descendents were concluded by their express Consent to the Act, Declaring John the true and Lawful Heir of Robert the 2d. and that he should as such Succeed to the Crown.

Therefore 'tis not necessary to consider, whether John was the Son of the first Wife or no.

It must be agreed, that the Act seems to leave it questionable in what Sense he was then accounted Lawful Heir of his Father.

If Sir George Mackenz^y, were to be rely'd on, where he contradicts the very Authorities which he presses upon others, there is no room to doubt but John was the Son of the first Wife: for Sir George pretended to give the Substance of a Second A^t of Settlement, which he promised to Insert at the end, word for word, wherein he says, John is called his

Eldest Son by his first Marriage. That he might well be called his Eldest Son after the Act 1°. of his Reign, is past Dispute.

Looking at the End for Confirmation of this, I find this Advertisement instead of it.

Postscript.

" In regard there is Page 194, 195. Mention made of an Act of Parliament, Determining the Succession to Robert the Second's Children, and Referr'd to here; upon further Consideration the Author has thought fit to defer the Printing of it till another time; the Substance of it being Inserted in the said Page. In so much as Sir George had thought fit to give of the Second Act, it appears to have been, on purpose to secure the Succession, and to prevent all Discords that might afterwards arise in any part of the Kingdom, about Titles to the Crown.

Page 194.

It seems at least, that the Sacred Tradition of the unalterable Series of Successions, was not generally received: for it must be agreed, that Passage might be applied to that Uncertainty, as well as to any Doubtfulness of the Lawful Birth of Robert the Son of John.

As Sir George seems to have stretched the Authority of the Act, to put the Lawful Birth past dispute, with all who would acquiesce in his Authority; it may be evident that the Scotch College of Jesuits, or other Popish Order at Paris, have cast a greater Blemish upon it, by a pretended Charter, which carries with it apparent marks of Forgery.

They

They, being expert at their Trade, might easily impose upon Men of Quality, to whom they produc'd a Charter, sealing of the time, with formal Seals and Subscriptions.

This was pretended to be a *Charter of Robert the 2d.* when he was but *Steward of Scotland;* and yet makes him, in the Stile of a King, to say, we have affix'd our Seal to it.

The *Charter* pretends, that *Robert had delegated the Bishop of Glasgow to the Pope, to obtain for him a Dispensation, to Marry Elizabeth Mure,* notwithstanding the impediment of *Consanguinity and Affinity:* which was granted, provided *Robert would erect 2 Chapels, or one, at the pleasure of the Bishop.*

Lord Turbat's Vindication.
p. 28.

Therefore he granted to God, the *Blessed Virgin,* and *St. Kentigern,* and to one *Chaplain, 10 Marks Sterling,* to be receiv'd out of the *Annual Rent of 40 L Sterling,* out of the *Land of the Abbot of Ceres,* in the *Sherifwic of Strivelin;* to be receiv'd by the *Abbot and Convent of the Monastery of the Holy Crois at Edinburgh,* for the use of the *Chaplain:* Subjecting himself and his Heirs, to the *Bishop of Glasgow, and his Offcial.* Dated at *Persib the 12 of Jan. 1364,* and attested by *John Steward, his first Son and Heir, Lord of Kyle.*

Where,

1. The Scotch Fraternity make a *King of Robert,* before his time; not only in his Stile, but in a fancied *Regal Power* to put himself and his Heirs, under what *Bishop* he pleased, in whatever *Diocese* he or they lived, or should live.

Sir. G. M.
Right of Succession
defended, p. 193.
Elizabetha.
Mora a-
gnoscitur
Prima Us-
or, & Eu-
phemia Ross
secunda.
p. 17.

2. Tho' the Lord Tarbat has ascertain'd the Fa-
mally of Eliz. Mure, whose name in Latin was
Mora; and consequently might know what re-
lation, if any, there had been between Robert
and her, before they came together; his Lordship
has not found out any Consanguinity, or Af-
finity.

3. The suppos'd Grant of 10 Marks to a
Chaplain, is not pretended to be supported by
any Payment, or so much as colourable de-
mand.

4. But that which manifestly detects this, is,
that in the Year 1364, John the Son is stiled
Lord of Kyle, which is abundantly disproved by
an undoubted Record produced by the Lord
Tarbat, and confirm'd by others.

p. 17.

The Lord Tarbat produced a Charter of King
David, which he held to be 37 Years before
the Death of Eupheme, whom the Scotch Histori-
ans will have to be the first Wife of Ro-
bert the 2d.

This falls to be in the Year 1350, in which
Year, according to the Lord Tarbat himself,
a Charter of King David's was attested by Ro-
bert, and his first begotten Son and Heir John,
Steward, Earl of Carric.

Vid Mr.
Rymer's
first Letter
to the B.
of Carlisle.

From that time it appears by numbers of Re-
cords, that John had the stile of Earl of Carric,
sometimes Steward of Carric; that Stewardship,
it seems, being an Earldom.

But

But no Man can pretend that an *Earl* was ever known to Subscribe any Deed, or *Charter*, only with the Title of a *Barony*.

This therefore is an undeniable evidence of a late Contrivance by ignorant *Monks*: And their blunder here might, possibly, be occasion'd by finding *John Lord de gla*, called Son of P 6. *Lord T.*
Robert, as he was Son-in-law, having Married his Daughter *Margaret*.

They who value themselves upon their Suppos'd Impartiality, in rejecting the *British Stories* of *King Arthur*, and the *Charter* engraven by Mr. *Rymers* direction, of *Homage to Edward the Confessor* for the Kingdom of *Scotland*; would think themselves secure in denying both, if *Jeffery of Monmouth* were the first who mention'd *Arthur's Story*, or there were no other Foot-steps of *Homage* done the *Confessor* for *Scotland*, or *Investiture* of it from him, earlier than *Queen Mary's Reign*, as Mr. *Ridpath* supposes. And yet this *Charter*, pretended to be *Robert the 2d's*, tho' it never started up till Mr. *Hunt* had reviv'd the *Story of Elizabeth Mure*, or the *Duke of Monmouth's Competition* with a Popish Successor, call'd for that a *pious fraud*, is swallowed by these *impartial Men*, without chewing; they not considering, that the constant course of the *Scotch Historians* affirming the *Story*, must necessarily have occasion'd an early disproof, if there had been any of that kind.

Besides, they might have found the *Pope's Bull*, as well as the *Charter* pretended to have been occasioned by one.

The Bishop of Carlisle, speaking of King Robert, Father of that John, says

ScotchHist.
Lib. p. 151

" One of the main occurrences of this King's life, has been *vilely mis-represented* by the best Historians of Scotland, who generally report, that *Eliz. Mure* was only his Concubine, when she bore her Son *John*, afterwards King, by the name of *Robert*, the 3d. who was legitimate after his Father's accession to the Throne, and preferr'd to the Lawful Issue of his Rightful Queen *Euphemia*.

If the Historians affirm'd that *John* was not Legitimated till after *Robert* 2d. was King, it must be agreed, upon the Records produced by the Lord Tarbat and Mr. Rymer, that the Scotch Historians were in the wrong; for *John* was accounted *Robert's Son and Heir*, several Years before the Father was King.

Sometimes he was call'd *first begotten Son and Heir*, and *Steward of Carric*, and more generally *Earl*; but that of *Lord of Kyle* was certainly an ignorant Monkish Invention.

It must further be agreed, that his Mother's name was *More*, or *Mure*, and the Lord Tarbat produces a Record in the 12th. of King Robert's Reign, of a Grant to one *John Steward*, or the *Steward*, begot between him, and his belov'd *Moram*, as his *Lordship* disguises the name of *More*, by using the Latin Word in the Accusative Case.

It cannot therefore be denied, that the Mother of this *John*, whom his *Lordship* calls a *Coneubine*, was *More*.

The Lord Tarbat says, That in the Story Vindication of Elizabeth Mure, and her Son John, Major, Baebhus, Lessy, and Buchanan, have followed one another.

R. 3. p. 2.

And though Sir George Mackenzy set up Lessy for an Author, who Writ with all the exactness that the tract of History required; his History being drawn from the Ancient Records and Monasteries of the Kingdom,

The Lord Tarbat says,

Lessy had no Design in Writing his History,
but to Assert his Queen's Right, and Resent
the Injuries done her: and therefore minded
little to put his Authors to the Test:

However, it appears by his Lordship's own way of Arguing, that Bishop Lessy was wiser than to think that Story which he received, could be any prejudice to the Divine Rights, which the Law of his Country, and the Consent of the Chief Lord of the Fee, had transmitted to his Queen.

The Lord Tarbat says farther,
Perhaps, even the first of the Historians,
by a supine inadvertence, having heard
that Robert the 2d, after Queen Euphem's
Death had Children by a Concubine, to
whom he had a great Kindness, and that
his Concubine's Name was Moram; did ignorantly confound his Concubine Moram, with
his first Wife Mure.

This Conjecture, he says, is founded upon a Charter of the 12th. of that King's Reign, Granting several Lands to *John* begot

*Inter nos & dilectam No-
stram Morem.* Between us and
our Beloved More;

'Tis observable, that his Lordship will have the Children by the Concubine, to have been Born after the Death of *Eupheme*. Forgetting that he had cited *Fordon*, to prove that *Eupheme* did not die till the Year 1387; whereas the Historians, and the Act of Parliament produced by his Lordship, shew, that *Robert* came to the Crown in the Year, 1371. So that *Eupheme* did not die till the 16th. of *Robert* the 2d. but the Charter to *John*, the Son of *More*, was in the 12th. which makes it evident that *John* was Born before *Eupheme* died.

The Bishop of *Carlisle*, possibly, observing this, will have it, that the Lord *Tarbat* was mistaken in the date of that Charter.

Though my Lord *Tarbat* cites *Fordon* himself, to prove the Death of *Eupheme*; he will not allow him to have known any thing of the Birth of the Children by *Mure*: and will have that Story added by his Continuator.

The Story, as 'tis to be found in the *Scotocronicon*, according to the Extract which I took severl Years since, is thus,

" In

" In the Year 1390, Robert the 2d King of M. S. do
 " Scotland, dyed on the 13th. of the Kalends of ^{per prah-}
 " May at his Castle of Dundovald, and Reign'd ^{norab.} Ar-
 " 19 Years and 23 Days, he lived 74 Years: thur. Com.
 " he was Seven Years younger than his ^{de Angl.}
 " Uncle David. That King Robert, of Lady Communi-
 " Elizabeth Daughter of Lord Adam Mure, be-
 " gat 3 Sons, to wit, John, who afterwards was ^{cus. Magi-}
 " King, and Robert Duke of Albany, and Alex- ^{fro Petyt,}
 " ander Earl of Buchan, who was commonly ^{cujus bene-}
 " call'd the Wolf of Badenach. After this he ^{ficio hoc}
 " Marry'd Eupheme Daughter of Hugh Earl of ^{debet. l. 14.}
 " Ross, of whom he begat Walter Earl of Athol, ^{6. 54. De-}
 " and Lord of Brechin, and David Earl of ^{hinc despon-}
 " Strabern: But Queen Eupheme being dead, he ^{savit Eu-}
 " Married the Lady Elizabeth, and so by virtue ^{phemiam.}
 " of the Second Marriage supervening, the
 " said Persons were Legitimated, to wit, John,
 " Robert, and Alexander.

This Author concludes (a) with the Death ^{(a) Lib. 15.}
 of J. I. In the Year 1436. and (b) as him- ^{(b) Do An.}
 self says, was Born in the Year 1387. ^{1387. Obige}
^{Unphemia}
^{Regina}
^{Scotia,}
^{natus est}
^{author}
^{bujus ope-}
^{ris.}

Sir (c) George Makenzy says, he has seen in
 " Fordon's History, Lib. 14. p. 73. a Charter
 " Granted by King David to the Bishops, with
 " the Consent of Robert his Nephew, and his Sons,
 " in which Charter the Witnesses are, Robert ^{(c) His right}
 " Steward, Earl of Strabern our Nephew, John of the Suc.
 " Steward, Earl of Carric first begotten p. 200.
 " Son and Heir, Thomas, Earl of Mar,
 " &c.

This shews, that the Author, or Authors
 of the Scotobronicon, being appriz'd that John
 was

was call'd Son and *Hair of Robert*, in the Life-time both of *King David*, and *Eudoxia*: could not be so weak as to imagin, that John's first *Legitimation* was by the *supervening Marriage* of the *Concupine*, after *Robert* came to be King, and his Queen *Eudoxia* was Dead.

On the other side it must be agreed, that without supposing a *Legitimation*, either by *Letters Patens*, or *Act of Parliament*, in King *David*'s time; that *Chronicle* has overthrown his own Story, and all the Historians who followed their most Celebrated *Chronicle*, either were easily impos'd on, or wilfully blind.

I shall not pretend to affirm, or so much as suppose a matter, of which all their *Historians* seem silent; yet if there had been such a *Legitimation* before the *supervening Marriage*, 'tis no wonder that *Fordon*, or his *Continuator*, in the dark times of *Papery*, should count that which was according to the *Canon-law*, preferable to what was by any *Civil-law*.

Sir *Thomas Craig* says upon the like Case.

" This *Posterior Legitimation* looks back also,
" and the *Marriage* is presum'd to have been
" Contracted from the beginning.

At least, he holds this *Legitimacy* to give preference in such things as are afterwards acquired, which in the time of former Wives were neither possess'd nor hop'd for.

Upon this account, because of the possession of H. 4, 5. and 6. he supposes the *Legitimation*, by the *Duke of Lancaster's* Marrying *Catharine*

Swynford, to cut off the presentations of his Children by former Wives.

These Successions were not under that Legitimation; but only Diversions of, or Digressions from, the suppos'd strict Right of Descent.

The same appears in the Succession of the Branc's, contrary to the true Right of Descent in the Family of Beliol; not but that the States of the Kingdom, if they had the consent of the Lord of the Fees, did not go beyond their Power of chusing within the Royal Family.

Hitherto we find not that they had settled the Crown upon Robert and his Heirs: However, James the 1st. the Son of John, who succeeded by the name of Robert the third, having been receiv'd by the States of the Kingdom of Scotland, after Investiture, and doing Homage for himself and his Heirs, for the Kingdom of Scotland; from that time the Family of the Stewards had an undoubted Title to that Kingdom, as long as they kept their Kingdom in the Subjection to the Head of the Monarchy.

And this Sir Thomas Craig has resolv'd in the like Case, where he says, seeing the Kingdom of Naples was a Fief of the See of Rome, It is not Of the Succession possesse'd by Right of Succession, but by the f. 308. grant or concession of the Superior Lord.

It must be further agreed, that whatever Objection lay against their J. the 6th. our First, from the Machinations of his Mother, and Judgment thereupon; he had a good Title, not the least touch'd by any blemish affixed to the Mother. *Vid. Sup.*

Margaret Daughter to H. 7th. after the Death *Lafleur.* of her Husband J. 4th. Married Archibald Douglas Successor.

Earl p. 10.

Earl of Angus, by whom she had Margaret, who
Married Matthew Stewart Earl of Lenox.

Margaret Douglas had by the Earl of Lenox
two Sons, Henry and Charles. Henry was born
in England, and coming into Scotland to see his
Father, being very desirable in his person and
behaviour, obtain'd the Favour of Mary
Queen of Scots to be chosen for her Husband:
which choice, Bishop Leslie says, the Queen made,
“perceiving that a Right would accrue to her
“from thence, since Henry was born and Edu-
“cated in England, and might supply all de-
“fects, if any could be objected against Queen
“Mary.”

King James the 6th. of Scotland having, upon
an undoubted legal Right, been recogniz'd
King of England, that thereby the Right became
Divine, and Scotland was, by the same Right,
annex'd to the Imperial Crown of England, has
appear'd at large.

Some part of the numerous Evidences of
which, with occasional Remarks, I shall sum
up as briefly as well as I can.

C H A P. XLII.

*A Summary of the State and Nature of the
whole Controversy, and of the Principal
Proofs of the Right of the Crown of Eng-
land over Scotland.*

WHerin soever the Merits of the Contro-
versy lye, I cannot but think it evident,
that no denial of the Scots, grounded upon
any

any Records or Histories among themselves, can in the least diminish the credit of the English Histories, supported with Charters, and other Records, of the respective times ; and this Demonstration arises, not only from the true Antiquity of our publick Accounts, and the Novelty of all theirs, but the little Credit which themselves now give, to the best and most ancient of their Historians ; the disagreement between them all, and their suppos'd Sacred, tho' varying Tradition ; and the testimony which Foreigners have given, particularly *Bodin*, and *Gerard du Hailon*, concurring with our Records, and Histories.

Besides all which, if they believe the Father of their Historians, *Fordon*, all our Registers, preserved in Monasteries of Royal foundation, are to be look'd on as Records ; in which there was a Moral impossibility that there should be Material errors, in relation to the Principal Transactions with other Nations ; unless we can think our Peers, and Representatives of the People, from Age to Age, Conspired together in transmitting gross Falshoods to credulous Posterity.

To come then to consider the Result of such Evidences.

As in a former Treatise, I proved the *Scots*, *Vid. The Hist. and Reasons of the Dependency of Ireland,* and all other Inhabitants of *Ireland*, that first Kingdom of *Scots* in *Europe*, to be within the English Monarchy, in the time of the *Saxons* ; and from within the Reign of *Henry the 2d.* governed by the Laws of *England* ; I may here satisfy all unprejudiced persons, that the *Picts* first, and afterwards the *Scots*, and others, who have been

been any ways Possessed of what is now called *Scotland*, were, before the times of the *Saxons*, Subjects of the *British Imperial Crown*; and upon the Translation of the *Monarchy* to the *Saxons*, and alteration of the *Stile*, of the *English*; under which *Crown* they have ever since continued: That whatever temporary departures there may have been from Duty, the Kings and People of those Parts, have sufficiently recognized the *Right* of this *Crown* from Age to Age; by the *Investitures* of their Kings, as well as *Homage* for their Kingdoms; by their frequent Attendances in the *Parliamentary*, or other *High Courts* of the *Monarchs* of the *Island*; the Oaths of *Allegiance* frequently renewed by their Subjects; and long *Obedience* to the *English Laws*, in *Church* and *State*.

For these matters, the course of *Evidences* and *Authorities* is so strong and diffusive, that the excepting against several of them, if any reasonable exception may be taken, unless the whole Stream can be diverted, would be but like going to empty a River with a Bucket.

And I hope I shall not be thought over *Credulous*, or *Contentious*, in urging some *Autorities* which have of late been controverted; till they are brought in *Question* by like *Autorities* of the *Times*: especially where *Circumstances* evince, not only that there was no occasion to Counterfeit any Proof of *Homage* for the Kingdom of *Scotland*; but that it must needs have been then expressed by *Deed*, in *notoriety of Fact*, if not in words at large,

If the sole *Question* were, as it is not, of *Homage* always expressed for the *Kingdom of Scotland*,

called
Saxons,
upon
Saxons;
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Scot-

Scotland; the Scots would have no reason to value themselves, upon any want of Proof of Homage for that Kingdom, in the British times, or the beginning of the Saxon Monarchy; since the only Reason was, that the Scots had then no Kingdom here, and their Antient Kingdom of Ireland is swallowed up in those Bogs, or rather, in the Crown of England.

But the Piets here, and other Possessors of the now Scotch Bounds, if they did not Homage, at least, own'd and paid Subjection to the British Monarchs; to which they were to Swear Allegiance in the general Falkmote, by the Constitution of King Arthur, preserved in that Body of our Common-Law, which has been continued downwards, as the Fundamental Law of the Monarchy, which is part of the Oath of our Monarchs, and Admonishes them of their Obligation, to keep the Scots, and Piets, of Albany, in due Subjection; as their Country is an Appendage to the Crown of the Island.

Though 'tis but matter of Curiosity, not Essential to the main Controversy, that there was not only Allegiance Sworn, but Feudal Homage done in the British times, and consequently by Piets and others then Settled here, wants not Proof.

But the chief Question is not of Feudal, but Liege-Homage, or Allegiance; of this it cannot be denied that the British Monarchs were duly Possessed throughout the Island: and Sir T. C. himself receives an indubitable Authority, as far as he thought it for his Purpose, which shews, that the Renowned King Arthur laid a wise Foundation for the Security of this Monarchy,

cby, in obliging all the Inhabitants within this Island, once a Year to repeat their Oaths of Allegiance to their Supreme King, whom God, Nature, and the Laws, had set over them.

From Cadwallader the last King, entirely British, the Monarchy of the whole Island was duly Translated to *Ina*, upon a British and Saxon Title.

Anno. 827. Egbert being, in a general Council of all Britain, Crown'd Monarch of England, in the Year 827; then began the English Monarchy, as distinguish'd in name, not in reality, from the British.

But the Graft gave Denomination to the Stock, which stood Possess'd of the Right of the Soil.

The Confessor's Law receiv'd by Sir Tho. Craig, is so clear, not only in the Derivation of the Right of the Monarchy from the Britains to the Saxons, but in the Subjection of the Scots, and all other Inhabitants within the Island, to the British, and since to the English Crown; that one would wonder Sir Tho. Craig should have overlook'd it, or with what Art he should pretend to evade it.

This has appear'd sufficiently from such part of those Laws, as he had cited in his Treatise of Homage; and has been further confirm'd by other parts, which he then thought fit to conceal.

In his Treatise of the Succession, he finds occasion to give more of the Law which yet, he durst not venture abroad without some previous Antidote.

" The

Sir T. C.
of the Suc-
cession.
f. 268.

' The Title of the Statute, he says, is first to be f. 266.
 considered, that is concerning them who of Right
 are enabled, and ought to cohabit, and to remain in
 the Kingdom of England.

' For *Debent* is a Word of Law, and infers
 Right and *Cohabitare in Anglia*; imports nothing
 less than to enjoy the same Laws and Privileges
 with the *English* Inhabitants. For otherwise
 were it to be understood barely of living, as
 that the *Scots* might dwell and remain in *Bri-*
tain, they could not owe that to any Statute or
 Favour of *Edward*, when as they had then liv'd
 in the Kingdom of *Britain*, by their own Right,
 and as elder Possessors long before the *English*
Saxons. But the word *Britannia* is there taken
 for that part of *Britain*, which had been a Pro-
 vince of the *Romans*.

His Admirers may not discern the weakness of
 this evasion; but,

1. Does it follow, that because *Debent* infers
 nothing less than to enjoy the same Law, it in-
 fers nothing more; and does not infer Right to
 Cohabit under the same Law?

2. Is it enough not to owe the Right of Co-
 habiting in the *Island* to King *Edward*, or any Sta-
 tute of his, or of any other *Saxon King*; when
 that Statute derives the Right of the *Saxon Mon-
 archs* from the *Britons*, who had been first pos-
 sessed of the *Monarchy*?

3. If the *Saxons* were possessed of the *Monarchy*,
 before ever the *Scots* had any Kingdom here, the
Scots tho there never had been any Express Sta-
 tute in the case, must necessarily owe their living
 here to them, and be Subjects of that *Monarchy*.

4. 'Tis absurd to say, that this was, by the
 meaning of that act, confin'd to that part of *Bri-*

tain, which had been a Roman Province, within which 'tis supposed, that but a little of what the Scots now posses was compriz'd; for if it were so, no right is shewn for the Scots to dwell within the Island: when the plain intent both of the Title and the Body of the Statute, was to shew, that the Scots, and all other Inhabitants of the Island were Subjects of the British Crown, since English.

Tis wonderful that Sir Thomas Craig should not discern this, in so much as himself had cited of that Statute.

f. 267.

f. 268.

Per uni-
versum
Regnum
Britannie.

His own quotation shews, that *Ina* was King of the English and Britons, upon a Saxon and British Title; how the Scots came to a Coalition with them, and so they were then thro' the whole Kingdom of Britain two in one Flesh.

Sir Thomas Craig's Editors, presuming that their Translation would pass upon most Readers, tho' the Text stood on the side render it [througbout all Britain] that it might not be observed how all Britain made but one Kingdom, of which the Scots were Subjects as well as the Britons and Saxons.

I cannot pass by another perverse Translation to continue the imposition,

Et taliter constituitur Regnum conjugium. And so the Kingdom constituted a Marriage.

This was a pursuing the Metaphor that two became one Flesh; but Sir Thomas's Editors render it thus *Marriage settled the Kingdoms.*

Yet they knew not how to pervert what follows in their own Words.

An

' And abolish'd Fornications (which there must be meant of submitting to any power, but the Crown of the Kingdom) and baned and prudges from it, and righteous Laws were made for the establishment of the Kingdom, and for strengthening the People by a gracious carefulness. And by such methods by the Divine Mercy they became one Nation, and one People over all Britain. All these aforesaid did ever afterwards stand stouterly, as one Man, for the common utility of that Kingdom against the Danes, &c.

The said Ina was a most excellent King, governed the Church, and united and strengthened the Kingdom by his great Wisdom and Prudence, as well as by War and force of Arms, when there was occasion.

Here again is a willful omission. the Words being *Regnum Confederavit, Consolidavit, & in unum pacificavit*, and the Kingdom he Confederated, Consolidated, and Peaceably brought into one.

They must be very blind who cannot discern that this Kingdom, was not confined to what has been thought the extent of the Roman Province ; but took in the whole Island, and the Scots by name were Subjects, not only to Ina ; but to his Successors in the British and English Monarchy.

5. If what has been cited by Sir Thomas Craig could admit of any doubt ; it is yet, if possible, more indubitable upon other parts of that Statute. After the praises of Ina it mentions the extent of the Island of Britain, 800 miles in length, 200 in breadth, and says 'tis inhabited by 5 People, the Normans, Britons, Saxons, Picts and Scots.

Quinq;
Inhabita-
tur Popu-
lis.

*Ex quibus Britones
olim ante omnes Cæteros
Antecessores suos, a mari
usq; ad mare insederunt,
donec ultiōne divina prop-
ter ipsorum superbiam,
Pictis & Saxonibus cesse-
runt.*

Of whom the Britons
of old beyond all the
rest of their Ancestors,
possessed it from Sea to
Sea, till thro Divine
wrath for their pride,
they yielded to the Picts
and Saxons.

Where the Scots are none of the People, whom
God had made use of to punish the pride of the
Britons.

In another part which I had cited above, ha-
ving mentioned the Picts and Scots of Albany,
it adds,

*Est enim Albania pars
Monarchia Regni hujus,
quod olim vocabatur Reg-
num Britanniae.*

For Albany is part of
the Monarchy of this
Kingdom, which of old
was called the King-
dom of Britain.

The Picts, Britons and Daelreodian Scots, being
Subjects of this Monarchy when British, as this
Statute and Histories evince, stood in the same re-
lation to it when the name was alter'd.

The Picts and the Straecled Welsh, the * Caledo-
nian, Cumbrian, and other Britons had subordi-
nate Kings in the British Times, but whatever
Kings the Scots had in Ireland, they had none
set-

* Irvini Hist. Scot. Nomenclatura, p. 33. Caledonia pro-
perly signified that Country that lay alongſt the face of the
Hills from Aberdeen unto Cumberland, and is oft taken for the
whole Kingdom of Scotland.

settled, here till after the Monarchy was established English: and still the People with their Kings were Subjects of the one Kingdom, as the Confessor's Law shews, consolidated by *Ina*, and founded upon a British and Saxon Title.

After *Egbert* had continued the Consolidation under an English name, *Cuneda* or *Kennet* the Son of *Alpin*, by a Victory over the *Picts*, in the year 843. when *Ethelstan* the Son of *Egbert* was Monarch of all Britain, took the Royalty from the *Picts*, and succeeded into the Pictish State of Dependency upon the Crown of this Monarchy.

If the *Picts* did not recover Regal Power, they soon rallied their Forces together, and for a long time after continued a Nation distinguished from the *Scots*, even as late as the famous Battle of the Standard in King *Stephen*'s time.

The Strangled Welsh, for certain, had Kings of their own, a considerable time after the *Scots* had Kings settled here, and the *Lothians*, which were called *Pictland* by way of eminence, continued still in the English Hands, and made no part of the Kingdom of Scotland, for several Successions of the English Monarchs. When the *Danes* possessed themselves of the Northern parts of *England*, such of the *Picts*, *Scots*, and *Northern Britons*, as were not immediately under the Protection of the English, submitted to the *Danes*; and yet the English Monarchy continued, was asserted by King *Alfred*, and fully restored by the worthy Son of such a Father *Edward the Elder*.

The Feuda Law, which may be discovered by no obscure traces of the British times, now appears in the pomp of supposed Modern Terms, and every Reign furnishes proofs of it. Military

Tenure, and Homage incident to it, appear beyond all colour of dispute.

Defence of the Antiq.
p. 148.

I cannot but here observe the fabulousness of the Scotch Historians. Sir George Mackenzey says,

'all their Historians agree, that Gregory the Great King of Scotland, who died in the year 892. added Northumberland to the Mense, and having defeated the Britons at Lockwaben, he forced them to renew their Ancient League, and to confirm to him the former Right his Predecessors had got from them, to Cumberland and Westmorland.'

It seems Sir George and all the Scotch Historians, overlooked the Evidences for above 60 years; before that time that the Monarchy had been English, and neither Britons nor Scots could make any League, much less confer a right to any part of the Kingdom.

That the Kings of the Scots did Homage then, and before, their best Advocates agree. For what this was, is the only question they pretend to raise.

Sir Thomas Craig, as if he had never read any thing of the Danes in England, will have it that the Scots 'enjoy'd Northumberland, Cumberland, and Westmoreland Peaceably, all King Alfred's time, as they had done from the Reign of Gregory, who had taken them from the Britons, and the English, altho the English Annals affirm, that they were freely granted the Scots, as a reward of their joyning in Arms with them against the Danes.'

*Sir T. C.
f. Homage,
p. 153,
154.*

Chron. Sax.sup. One would think Sir Thomas never intended to publish such an Appeal to the English Annals, which are express, that Alfred was chosen King of

all

all England, except that part which was in the power of the Danes; and that the King and People of the Scots and Regnwald and Eadulf's Son, and all the Northumbrians both English, Danes, Men of the North, and the King of the Stræted Welsh with his People, chose Edward Son of Alfred for Father and Lord.

The Scotch Chronicle Of Maijross says, fecerunt homagium, they did Homage, that the Homage done by the several Kings, was for their respective Kingdoms circumstances evince; their People joining with them in the Recognition of Subjection, to an establish'd Monarchy: and it cannot be deny'd that where-ever a Nation so joins with their Prince, this is even a fuller instance of the Subjection of the Kingdom, than their King's expressing it at the time of his doing Homage. This Homage therefore, and Recognition of the King, and Nation of the Scots, being without the least Relation to any of the suppos'd beneficiary Lands, which were manifestly possest'd by others, overthrows the foundation which Sir Thomas Craig and his Followers build upon; if there were not concurrent evidence, that the Kingdom of England was a Monarchy, into which all the parts of the Island of Britain or Albion were consolidated. As Edward the Elder had throughout the Island been received as Father and Lord.

The Authorities are no less plain of Edward's Son Athelstan. If the Monarchy had been wavering till then; he at least fixed it, and according to Ethelward, whose Credit Sir Thomas Craig endeavours to impair, no otherwise than by lessening his Antiquity, the Scots and Picts submitted to him, all the Fields or Territories of Britain were consolidated. The Oaths given to the then English

Monarch by the King of Scots, and other Subject Kings, must needs be for their Kingdoms; as they had *Investiture* from him, and were *constituted*

(a) Hist. Dun. ec. Subse con. Stituit regnatur. (b) f. 265.

Kings (a) under him. Till the time of W. I. according to Sir Thomas Craig the Scots submitted to this State of Subjection, for he says from the time of Athelstan to the Conquest being 140 years, the Scots lived in the closest Friendship with the English, and in their Wars had the same Friends and Enemies.

If any are so nice, as to require a proof of all the circumstances seeming, by Foreign Feudists, requisite to make an *Investiture*; Sir Thomas Craig speaking of Queen Elizabeth as lawfully Invested in her Kingdom, says, *Coronation is instead of Investiture and Seisin*. Whenever, therefore, a King of Scots has been Crowned by the appointment of the King of England, this must be agreed to have been an *Investiture* from him. And tho this might be at times when *Homage* could not be performed because of the absence of the Superior; we may well give credit to Historians, who mention pledges for the performance of the Duty.

From Athelstan's time our Kings in their Charters executed in National Assemblies used *Stiles* asserting their *Rightful exercise of Monarchical Authority*, over all the Kings within the Island of Britain, or Albion.

Which Title has been acknowledged by Kings of the Scots, as well as others, who attended in their Courts, and attested their Charters.

The first pretence of any King of the Scots to land in England, was in the year 945. When the English Monarch Edmund, granted the Government of Cumberland to Earl Malcolm, but if he

he was then King of Scotland, the Grant of that was far from discharging the Prior Subjection of Prince and People.

Accordingly the Nation of the Scots swore Allegiance to his immediate Successor King Edward.

Tho *Malcolm*, to whom our King *Edmund* granted *Cumberland*, might possibly at that time be King of Scotland; yet the Scotch Crown was not like the English: and therefore if it had been Granted to *Malcolm*, and his Heirs, it was but a private Inheritance, which would not follow a Dependent Crown. 'Tis certain, that in our King *Edgar's* time *Kinedy*, King of the Scots was Homager and Subject for his Kingdom within *Albany*, which seems not yet to have been called *Scotland*, and at the same time *Malcolm* was King of *Cumberland*.

And before that time the *Northbanbymbrian* Kingdom was united to the Crown under *Edward*, and governed by *English Earls*.

In the Reign of that glorious Monarch, *Edgar*, the Superiority and Direct Dominion of the Crown of *England* over all the Nation of *Scots*, was so fully recognized and submitted to, that they who deny it, must think the account of his extensive Empire as fabulous, as many fancy the whole Story of King *Arthur* to have been; and numbers of his Charters must pass for Forgeries.

Sir *Thomas Craig* was not sensible how much T.C. he was beholden to *Hollinshead*, for admitting, p. 215: that *Edgar* restored *Lobian* to *Kenneth*; but there is no Authentic proof that the *Scots* had *Lobian* till the *Confessor's* time, when it was taken out of the *Northbanbymbrian* Earldom, and given as a Dowry with *Edgar Atheling's* Sister.

If

If it could be supposed that Lorbian had been in the hands of Scots, before the time of Canute the Dane ; then, at least it was restored to the Crown of England.

In his time there Reigned together 3 Kings of the Scots, who all obeyed him, and the Kings and People were Subject to the English Laws, enforced by him and his general Dimate, while Earl Worn governed Galloway.

The Confessor with the Crown of England, as we are assured by his Laws, had the Kingdom of Albany as an Appendage ; all the Nation of the Scots were Subjects of the Monarchy of Britain or England ; were under the same Oath of Allegiance with the English, and bound to defend all the Rights of the Crown, and the Person of the Monarch ; and once a year to attend at the Folkmote in Person, or by representation : and upon this account they were Denizens, entitled to all the Privileges of Englishmen, as long as they performed the Duties of Subjection, but no longer.

These are the Laws which our Kings from time to time have sworn to maintain, and which Sir Thomas Craig, and others, appeal to, to prove, that the Scots are Denizens of England ; but as the whole course of the Common Law proves, that no Man can be a Denizen, but as he owes Allegiance to the Crown, and tho he owes that may lose the Privilege, which the performance of his Duty might entitle him to ; that Body of the Common Law, which the Confessor revived, and W. I. and his Successors confirmed, shews, that the Scots were accounted Denizens, as Subjects of the British Monarchy then called English ; and as their Country was an Appendage of the Crown.

Mat-

Malcolm received the dependent Crown of Scotland, from the Investiture of the Confessor ; and therein, as Sir Thomas Craig acknowledges, was King Edward's Homager and Vassal.

Vid. Lord Coke's Pref. to the 8th Rep.

After this, as Ordericus Vitalis shews, the Confessor gave him Edgar Atheling's Sister Margaret to Wife, and the Lothians. If upon this being added to the King of the Scots, he set up for a Kingdom of Scotland, he might well be glad to do Homage for the Kingdom by name, to give him so proud a Title.

And it must be agreed, that the Subjection of all the Nation of Scots before, was so evident, that if the Charter of Homage for the Kingdom of Scotland, now among the Records of our Treasury, as done by Malcolm to Edward the Confessor, is Counterfeit, it must have been counterfeited by the Scots, to justify their Claim to a Kingdom of Scotland.

'Tis certain, such a Charter was not in the least wanting, to prove the subjection to the Imperial Crown of England, of the Kingdom of Scotland ; whensoever it first sprung up from among the Scots of Albany, the Picts of Pictland, and other parts, and the Caledonian Britons, and others.

Besides that no objection of Weight has been published against that Charter, which Mr Rymer had caused to be engraven ; it will not be easy to blemish the exemplification of it in the Lord Longville's Library, in placing which among his Collection, that noble Lord's Learned and Judicious Ancestor, has stamp'd it with his approbation.

Among the particulars, in which Sir Thomas Craig take the facts to be with him, and if he fail in any of them, he admits, that the King of

Scots

Scots ought to be accounted *Liege Vassal*, and *Clyent*,
 p. 62, 63. to the King of *England*; one is, 'if there were
 'not always more than Capital Enmities betwixt
 'the two Nations, and if there were not the most
 'cruel Actions that could be, War, &c. betwixt
 'the two Kingdoms. Indeed it were but ne-
 cessary to his *Hypothesis* to suppose this, it being
 evident, that the *Britons*, and after them the *English*,
 that always claim'd a *Monarchy*: this Claim was
 quietly submitted to, he confesses, when he
 thought the confession of that truth served a more
 weighty purpose. To perswade the *English* to
 admit the King of *Scots* to the Throne of the *Mo-
 narchy*; he maintains, that *no man can say*, that
ever the Scots molested the English with any Wars,
as long as the Kingdoms of the English Saxons lasted,
as St Edward Witnessed in that Statute, and all the
chief Men of the Kingdom.

He had more discretion than to add, that
 the Statute declares, that the *Scots* were Subjects
 of this Kingdom of *England*, or *Britain*.

As soon after the Confessor's Demise, the *English*
Monarchy was duly translated to another Royal
 Family; the Head of those Successions *W. I.*
 of Glorious Memory, was fully recognized for
Monarch of the whole Island by the *Scots* Prince
 and People. This demonstrates that the *Homage*
 done by their King, was for the whole Kingdom,
 which, with *Lodeny* newly comprised in it, he
 owned to have received of King *Wm's* Grant;
 as before the doing *Homage* he agreed to it, in
 Testimony of the *Subjection* of that *Principality* to
 the *Kingdom of England*.

That all the *Scots* and *Picts* of *Albany* were
 Subjects to *W. I.* among whom he was to pre-
 serve the Peace and Justice, and that *Albany*
 was

was part of the *English*, as it had been the *British Monarchy*, his Laws evince, as well as notoriety of fact.

The *Scots* continued not only under the same *Monarch* with the *English*, but under the same *Laws in Church and State*; had the same *Supream King and Archbishop*, in subjection to whom they attended in the same *Councils* both *Civil and Ecclesiastical*, and as late as the Reign of *H. 3.* the *Chief Justice of England* was *Chief Justice of Scotland*. As to the Dependency of their *Church upon the Church of England*, whatsoever right the *Cession of Archbishop Lancfranc* might confer upon the *See of York*; 'tis certain the *Bishops of Scotland*, were to obey the Summons of the *Archbishop of Canterbury* to a *National Synod*, or his precepts grounded upon the *Writ of the Monarch of the whole Island*.

The *Superiority and Direct Dominion* of the *Crown of England*, over the *Kingdom of Scotland*, *Wm.* by the *Scots* falsely called a *Conqueror*, transmitted to his Heirs and Successors undiminished. If he were a *Conqueror*, it makes equally against them, since by *England*, with its *Appendages*, he acquired *Scotland*, and the *Saxon Chronicle* is express, that he put *Scotland under him*. One would wonder at Sir *Thomas Craig's* assurance, in telling a formal story of terms forced by their *Malcolm upon Wm.* whom he calls the *Conqueror*; after he says *Wm. had possessed England by force of Arms*, and said that all the Estates in *England belonged to him by the Right of War or Conquest*. Which is palpable fiction.

In Testimony of the Subjection of the *Scots* to *Chron. the Crown of England*, which *W. 1.* maintained, *Sax. p. 610. 19¹*.

Chron:
Sax. p.
198.

Malcolm, upon *Robert's* waving the Claim of an Heir to his Father, who was not Successor to his Crown, agreed to obey him as *he had done his Father*, and this he confirmed with an Oath, which was *Liege Homage* for the Kingdom; as in the Fathers time it was own'd to be a Principality under the Crown of *England*, and was no otherwise the Kingdom of *Scotland*, but as, with *Lo-deny*, it had been erected into that Kingdom by the *Confessor*, and confirmed by *W. I.* upon a new *Investiture*.

The original Charter of their King *Edgar*, agreeing with the Authorities not in the least to be suspected, puts this matter beyond all question; and convicts all of wilful blindness, who pretend not to see the Superiority and Direct Dominion of this *Imperial Crown*, over that whole Kingdom, advanced into the Kingdom of *Scotland*, by the late accession of *Lo-deny*: which the present Bishop of *Worcester* holds to be meant for all the *East Low-lands*.

Historical
Account
p. 45.

But I take the MS of the division of *Scotland*, which his Lordship refers to from Mr Camben, to be no sufficient Authority, that *Edinburg* was delivered by the *English* to *Indulph* King of the *Scots*, in the year 920. and *Mattew of Westminster* is too late to prove his Lordship's supposal, that the rest of *Louthien*, or *Lauden*, was granted by King *Edgar*.

His Lordship does not observe, that the share which the Scotch MS pretends to have been given to *Indulph*, falls within *Edgar's* Reign; so that we may well think *Edgar* granted all, which neither of the Authorities import, or none, which the Charter of the Scotch King *Edgar*, and more

more Ancient History than his Lordship cites, make very plain.

Since, therefore, by the grant of *Lodeny*, which had been within the known English Bounds, the Kingdom of *Scotland* arose, of which that was made a Constituent part; the denying *Homage* were it only by reason of *Lodeny*, would have been a *Forfeiture* to the Lord of the *Fee*, who erected the whole into the Kingdom of *Scotland*.

Even then, all that now passes for the *Ancient Kingdom* was not in it, particularly *Murray land*; and it may be a question whether *Galloway* was. However, the Territories which came to be within a Kingdom, owing to the *Creation* or *Investiture* of the *English Monarch*, the Feudatory Kings like our Lords Marchers, acquired as Subjects of *England*, and much the rather if the Territories were before but parts of *England*, or at least subject to it.

Every new *Investiture* was in the Eye of Law a new Grant of the Principal Feudal Territory, with all the then *Members*; accordingly the *Saxon Chronicle* shews, that upon the Death of *Edgar*, who in his Charter acknowledged, that he had the Kingdom of *Scotland*, with *Lodeny*, of the Grant of his Lord *W². our H. 1.* gave the *Chron. Kingdom of Scotland to Edgar's Brother Alex- Sax. de ander.*

As yet the *Scots* had no pretence to any County within the *English Pale*, but the East *Lowlands*. Sir *Thomas Craig* admits, that *Edgar* and his Brother *Alexander* did *Homage* to *H. 1.* but then, he says, it was only for the *Fiduciary Counties* of *Cumberland*, *Westmoreland*, and *Norburn- berland*.

p. 280.

1107.

All

All which Counties continuing then in the hands of the English, 'tis evident the Homage was, and in its own nature must have been, for the Kingdom of Scotland; as it had been in the Times of the Confessor, W. 1. and W. 2. when the Lothians, and the rest of the Territories belonging to the new Kingdom of Scotland at the times of the respective Investitures, were received of the Grants of our Kings.

Indeed the present Bishop of Worcester, tho' he with great Judgment, except against the credit of the Scotch Historians, yields too much in relation to the supposed beneficiary Counties; for besides the Inhabitants of East Lowlands, he allows the Clivendale Welsh, the Cumbrian Britons, and the Bernician Saxons, with the Picts, to have been taken into their Body: but pretends not to shew when the Bernician Saxons were taken in, which I am well assured he never can; besides, that it opposes his best Authority, Archbp. Usher. Neither did his Lordship, as he might, observe the short continuance of the Cumbrians under the Scots, if they ever were accounted within that Kingdom.

Even in King Stephen's time, how much soever he was embarrassed, by a powerful Competition for the Crown of the Monarchy, supported by David then King of Scots, who, among the rest of H. the 1st's Barons, had sworn to secure the Succession of it to King Henry's Daughter Maud, in the Saxon called Ethelric; yet King Stephen, in virtue of his possession of the Crown of England, obliged the Nation of the Scots, as well as their King, to give Hostages for pledges of their Fidelity: and yet King David pretended then to no more in England than the Honour of Hunsing-ton,

Chron.
Sax. de
An. 1127.

In firma-
mentum
fidelitatis.

ibn, which he Claimed not in his own Right as King of Scotland ; but either in the right of his Wife, or rather from the Grant of H. 1. who had given him to Wife *Maud* the Daughter of Earl *Waltbeof*, who before his Forfeiture, had not only the Honour of Huntingdon, but the Earldom of all *Northumberland*. Sir *Thomas Craig* indeed, according to his skill in History, says *Maud* the Empress gave *Judith* to *David*, with the Earldom of *Northumberland* : Which, however, is a plain confession, that till then *Northumberland* was in English hands. To the Honour of Huntingdon, King *Stephen* added *Doncaster* and *Carlisle* ; and whatever other parts of the *Northumbrian* Kingdom *David* pressed to have put into Scotch hands, he made no pretence to them as King of *Scotland* ; but demanded them for his Son, upon the weak Title of being Grandson to the Saxon Earl *Waltbeof*, who had been attainted by the Judgment of his Peers.

Whatever advantages *David* might expect from a King, whose Title he question'd and oppos'd; when the objection was removed by the Succession of H. 2. who was glad to come in as adopted Heir to King *Stephen*; Homage for the Kingdom of *Scotland*, tho it was paid by *Wm. King of Scots*, before he was at full Liberty, was afterwards in a free Parliament of both Nations at *York*, acknowledged to be due : and accordingly the Scotch Nation Swore Allegiance to H 2. as Superior Lord.

Whatever has been pretended of the release of R. 1. which, if full in Words, could not have been effectual ; 'twas with an express reservation of the Ancient Right of the Crown of *England*. Tho H. 3. had too much upon his Hands from his own People, to exact from his *Homager*, who might be useful to him in those unhappy Wars,

any more than the King of the Scots would yield, to the force of undeniable precedents; yet Alexander, then King of Scots, by his Charter without respect to any Lands, but what composed his Frugal Kingdom, owned himself King Henry's Liege Man, and made several of his Peers Swear to his promise, not to enter into any Alliance without his Lords consent. In which he and those Peers were far from supposing his Kingdom to be Independant, or that they lay under any obligation to the pretended League with Charlemaign.

After this Alexander the Son freely offered Homage for Lodeny, as a Tenement of England. But our King would not receive this for a full recognition of the due Subjection only, out of tenderness to a young Prince and younger Bridegroom, resipted doing Homage for the Kingdom, which the Records evinced to be due.

I need not repeat any of the Instances of the Subjection of the Kingdom of Scotland in the Reign of E. I. which I shewed so at large, and which the Scots acknowledge, but represent as an Usurpation upon their Ancient Freedom; and the doing it such a Breach of the Trust reposed in their King, that for this John Baliol was deservedly rejected by them. As if they were perfect Strangers to the judgment of the Lord of the Fee, which set him aside; the entire submission of their Nation; and those National Oaths, which may be thought more plainly to have involved them in repeated (a) Perjuries, than their

(a) Sir G M. The Right of the Succession defended, p. 196. How can we imagin, that the whole Parliament would have unanimously drawn upon themselves so dreadful a Perjury by excluding the Lawful Heir against their National Oath, in the Reign of K. Kenneth the 3d.

their frequent departures from Allegiance fancied to have been Sworn, in pursuance to *Mac-Alpin's imaginary Laws.*

Sir Thomas Craig in his pleasant *Romance* concerning Homage, says,

' At (b) the inauguration of our Kings, the consent of the King of England was never required, nor was ever the renewal of the Investiture demanded from any Successor to the Crown of England, but for almost 2000 years, the next of the Blood did constantly succeed in a continued Series.

We need not here criticize whether he meant the next strictly, or by right of representation, since even Sir George Mackenzy does not pretend, that the Successions were constantly either way.

To proceed with Sir Thomas.

*'Baliol was the only Man who ever had Inve- (c) 18.33
siture from the King of England.* 419.

I cannot but think his Countrymen will now be so ingenuous as to own *Malcolm*, *Edgar*, and several other of their Kings, had *Investiture* from the Crown of *England*.

But can it be imagined, Sir Thomas should be guilty of such inadvertency, as when he had another game in pursuit, to betray the cause of Homage, and yield to the force of what clearly proves, the Subjection of the Kingdom of Scotland to the Imperial Crown Of England? but 'tis certain he puts the matter upon such an Issue, as gives up the Controversy, no less evidently, than he did in appealing to the Confessor's Laws. His Adversary having, to prove the subjection of the Scots to the Crown of England, alledged that they chose E. I. to be their King, Sir Thomas advisedly says, If he ever finds it in any Writer,

that the *Scots* acknowledged *E. 1.* for their King, let him shew it, and so carry his point.

To satisfy his *Admirers* in this particular, I need refer them only to the *Publick Notary*, who Recorded the recognitions of the whole Nation; which being so, Sir *Thomas* has yielded the point to be fully proved.

Tho *E. 1.* was unworthily succeeded by *E. 2.* and the prevalence of a corrupt Ministry occasioned such a division in the *Kingdom*, as the *Scots* not only fomented, but profited by; the right of the Crown, if not sufficiently vindicated by the Sword, was by *legal Judgments*. (a) As

(a) Cart.
de An.
34. E: 1.
n. 22.

(b) Rot.
Pat. 12.
E. 2. p.
2. m 17.

in the 34th of *E. 1.* the Land of the Rebel *Robert de Brus*, Earl of *Carric* in the Bishoprick of *Duresm*, had been declared Forfeited, upon which it was granted out to *Robert Clifford*; According to this Precedent *E. 2.* in the 12th of his Reign, granted to his Son *John of Eltham*, all the Lands on this side *Trent*, which came to his Hands, by reason of the enmity of the *Scots* his *Enemies*, and *Rebels*.

Tho the Reign of *E. 2.* was inglorious, he asserted the Right of his Crown over *Scotland* as well as he could; and did not lose the Right, but with the Crown itself, which was advantageously taken up by his Son and Successour, *E. 3.*

He had *Homage* for the *Kingdom of Scotland* from *Edward Baliol*, who was upon every account the *rightful King* of the *Scots*; having that right, which Sir *Thomas Craig* will have to be the only Right by the Law of God, Nature, and Nations; and besides that, having *Investiture* after the *Scots* by their *Rebellion*, and adhering to

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King not so Invested, had lost the privilege
of having any King from among themselves.

Sir Thomas Craig in his Treatise of Homage, p. 419.
says, 'as for Edward Baliol, who followed his
' Fathers example, and Swore Homage to the
' King of England, we never acknowledged him
' for King.'

Yet having occasion to shew, that Scotland
was within the Jurisdiction of England, and so
accounted when the Statute of E. 3. about Ali-
ens was made, he says of Edward Baliol, he,

'Taking his advantage from the nonage of of Succession
' King David, and the Factions of the Scots No- on, f. 263.
'bility entered Scotland, having obtained of Ed-
'ward King of England 4000 English Forces for
'his assistance, and gaining a Victory, he took the
'Crown of the Kingdom.'

Thus Sir Thomas owns, that their Edward Ba-
liol, who must be agreed to have the best Title,
according to the rule contended for, by the
strictest Adherers to an invariable right of des-
cent, as he was put into the possession of the
Crown, by the appointment and assistance of E. 3.
had Investiture from him ; and therefore right-
fully did Homage for his Kingdom.

Sir Thomas shews at large, and very truly, that the
King and Parliament of England in the Reign of E.
3. were fully satisfied and declared it for the Law
of the Kingdom, that Scotland was, and ought by all
the English Subjects, to be taken to be, within the
Jurisdiction of England ; as the Scots and Picts
of Albany, were by the Laws of the Confessor and
W. I. declaratory of the Fundamental Right of the
Kingdom. Is it not therefore strange, that any
Modern Pretenders to knowledge in our Antiqui-

ties, should deny this, or hold it a *Paradox* much to be doubted of?

As *Edward Balliol*, then *Lawful and Rightful King of Scotland*, did *Homage* for his *Kingdom*; 'tis as plain, that *J. I.* of *Scotland*, under whom the *Illustrious Family* of the *Stewards* derive, an unblemish'd Title, by reason of the *Grant* and *Investiture* in the Reign of *H. 6.* did the same accustomed *Homage* for that *Kingdom*: if the *Imprisonment* of their *J. I.* were any objection against the effect of the *Homage*, it would be equally against the *Seisin* following the *Investiture*.

If it be said, that then from that time, the *Scots* maintained an *independent Kingdom* by force; that cannot reasonably be supposed, because 'twas actually received as a *Fiduciary Kingdom*: and if it were by force, the Right acquired by their *James the first*, according to that notion, and what *Sir Thomas Craig* and others infer from an imagination, that *W. I.* Conquer'd *England*, was to *him and his Heirs*, purged of all other pretences; and by consequence, when their *J. 6.* came to be King of *England*, he restored the *Kingdom of Scotland* to that *Imperial Crown*, which drew to it all Inheritances, and United them to his Politick Capacity, as *Monarch of England or Britain*: and the People of *Scotland*,

who

* Vid. Rot. claus. 13. E. 3. p. m. 2. Rex de avisamento consilij sui ordinavit quod magnificus Princeps Rex Scotie consanguineus suus carissimus perceperet de Thel. Angl. singulis diebus temp. pacis a festo inventionis sancte crucis 30 Solidos & singulis diebus quando de guerra equitabit 50 Solidos, &c.

who gave not the power over themselves, have nothing to do but to submit to their Duty upon the event.

Here I may ask some of Sir Thomas's Questions, only turning the Tables.

' What share of the power had the People of Scotland ? What Counsel did they give ? What transferring of power did they make ? Or what Power, Authority, or Jurisdiction received he from the People ? Did the People give the Kingdom to their James I .

That the opposition given by the Scots under their J. I. and his Successors, to the Right of the Crown of England, could not in the least weaken it, is confessed by Sir Thomas Craig, Bishop Lesly, and all their best Writers ; the only dispute which they make, is upon the Foundation and Antiquity of the Submission of that People ; that they set up here in a state of Dependency, and have continued it for all that they possess within this Island, and that the Lands which they have claimed within the English Pale, could not be the Ground of the Homage paid by their Kings, and the Allegiance of their Subjects ; I cannot but think now past controversy.

Tho' the Confession of Adversaries is a good Argument to the Men, 'tis not convincing to all, but as the Question is of the lawful Right of the English Crown ; the English Law is conclusive upon this subject, and it must be agreed, that this right is of such a nature, as not to be prejudiced by a much longer with drawing of Allegiance than can be pretended with any shadow of Truth : Nor can be lost till the English Nation has parted with it, neither can they give it up, without betraying the Rights of the Crown.

As the Claim is expressly continued by an Act of Parliament, as late as the 35th of H. 8. and virtually by every Coronation Oath, whenever the Prince swears to maintain the Laws of the good King Edward ; these are no Antiquated Laws, declaring the right of the Crown, and manifesting the danger of opposing it, as well as it would be treachery to give it up.

That French Faction, which spirited away the Queen of Scots, when Providence, and the good of the Protestant Cause offered them an opportunity of returning to their Subjection to this Imperial Crown, without the least seeming diminution of Honour ; tho' it has brought many Calamities upon England, as it were by God's just Judgment, has been most fatal to the Scots.

This occasioned the constant Victories in the Reign of E 6. the advantages of all which the English, thro' the influence of that glorious Confessor, the then Duke of Somerset, would have Sacrificed to the good of the Protestant Religion ; but no Man can think, that their Piety and Humanity, lost them all the Fruits of their Victory ; since they successfully asserted the Right of the Crown of England to the subjection of that Nation, which nothing but the influence of France, and a then Popish Clergy, could have kept from discerning its true Glory.

In the 14th of the Queen, all the Judges of England freed from that Byass, or inclination to Complement, which appeared 7^o J. 1. rightly held Hotage then due for the Kingdom of Scotland ; nor has there been any resolution of Judges to the contrary ; and if there had been any such, it could not preclude the Crown of its Ancient and continued Right ; and which, if there

there had been any discontinuance, was restor'd to the Crown in the times of Usurpation, as, indeed, all acquisitions made by the Subjects of an Independent Kingdom, are under the Crown of that Kingdom, and all Dominions so acquired, belong to it. Besides Sir Thomas Craig agrees, that the Statute of Edward the Confessor, in affirmance of the Common Law, and declaring the Scots to be Subjects of the English Monarchy, continued to the time of his writing in full force.

C H A P. XLIII.

*An enforcement of what follows from the Proofs
and Conclusion upon the whole.*

Homage for the Kingdom of Scotland, and its Dependency upon the Superior Crown of England continuing, their J. 6. who had an undoubted Right to the Crown of England from his Father, and to the Crown of the dependant Kingdom from his Mother, being duly recognized King of England, with all its Rights, Members, and Appurtenances; no Lawyer can deny that thereby Scotland was Re-united, and Annexed to that Crown, which had granted the Investiture to their J. 1. and his Heirs, whose sole Heir was their J. 6. our first.

If they who contend for the Divine Right of Succession, in a constant course of Descents to the next in Blood, shall upon that account object against

against the force of *Homage* done for the Kingdom by *J. 1.* of *Scotland*, Son to *Robert* the 3d, either giving credit to the *Scotch Historians*, who make that *Robert* to have been born before Marriage, or setting up the Right of *Baliol*, they may consider.

1. That tho' the right had duly been adjug'd to *Baliol* by the *Lord of the Fee*; the *Cession* of the then sole claimant under that Title, and the force in *Scotland*, followed by a deliberate *Act* of the *States*, bound all the *Scots*, till the dissent of the *Superior Lord* appeared.

2. Whenever one of the other *Royal Family* received *Investiture*, or did *Homage*, that not only confirmed the choice of the *Scots*; but, as appears by *Glanvil*, the possession upon that *Homage* gave the preferment to the *Heir of Bruce's Family* before the *Heir of Baliol's*.

3. If *Robert* the 3d were born before Marriage, yet he dying seised, his Issue were by Law entitled to the Inheritance of the *Crown* before the Issue of *Robert* the 2d by his Wife *Euphem*.

4. This which is a known Rule in private Inheritances, is strengthned by another Rule; as the possession of the *Crown* purges all defects.

5. The with-holding of the *Homage* of the *King*, and the Oaths of *Allegiance* of the Subjects of *Scotland*, much more their Acts of *Hostility* before their *J. 1.* did *Homage* for his Kingdom, gave the *Crown of England* a right to have continued the *Fee consolidated*.

Therefore the Grant and *Investiture*, 20
H. 6. removed all possible objections against the Title of their *J. 1.*

6. The *Scots* can make no colourable objection against the re-annexation of that Ancient

Mcm-

Member of the British, now English Monarchy ; since they had no right to have a King of their own, till the *Investiture* following the *Homage* ; and not only received their King upon those terms, but before hand, upon a solemn Treaty, agreed so to receive him :

Lesley, Craig, and others, who writ for the right of their James to the Crown of England, own a re-annexation, or at least the Right of the Legal Possessor of the Crown of England to that of Scotland, to follow in the event which has happened, and cite the Judgment of King H. 7. and of his Council accordingly.

To use the words of one, who seems to have been an English Lawyer, giving reasons why the rule of Foreign Birth, could not prejudice the King of Scotland's Right to the Crown of England. 'The fifth reason, says he, is the Judgment of H. 7. and of his Council concerning this matter. For they being in consultation together, about the Marriage of Margaret the King's Eldest Daughter with J. 4. at that time King of Scotland ; some of them moved a doubt, what should ensue, if by chance the King's Issue Male should fail, and the Succession descend to the said Margaret, as it now doth.

'Whereunto the Wise and Prudent Prince made answer ; that if it so chanced, England, being the chief and principal part of the Land, should receive no damage ; but rather great advantage, for that it would draw to itself the Kingdom of Scotland, as before it bad done Normandy, and Aquitain, with other Provinces. Which answer gave full satisfaction and contentment to the Council.

As

As appears above, H. 7. and his Council judged according to the known rule of Law, and the King was Right in his instances of Normandy, and Aquitain, which no man can reasonably question, after duly considering the Statute of the Kings Prerogative.

And yet, if there might be a question whether Children born in Normandy, while the Normans paid Allegiance to the Crown of England were Denizens here, when it may be thought that Normandy continued a Feud of the Crown of France; yet there could be no ground of doubt upon the King of Scotland's having that Crown, of which Scotland was originally helden.

I may further observe, that a Wise Parliament went upon the same Ground with H. 7. and his Council, for 14 E. 3. this Charter was passed in Parliament.

Stat. 14.
E. 3.

Edward by the Grace of God, King of England and Lord of Ireland, to all those which these Letters shall hear or see, greeting, Know ye, that whereas some People do think, that by reason, that the Realm of France is devolved to us as a right Heir of the same; and forasmuch as we be King of France, our Realm of England, shoud be put in subjection of the King, and of the Realm of France in time to come; we having regard to the state of our Realm of England; and namely, that it never was, nor ought to be in subjection, nor in the obeisance of the Kings of France; which for the time have been, nor of the Realm of France; And willing to provide for the surety and defense of the Realm of England; and of our Liege People of the same, Will and Grant and

Estat-

Establish for us, and for our Heirs and Successors, by assent of the Prelates, Earls, Barons, and Commons of our Realm of England, in this our present Parliament, &c. The 14th year of our said Reign of our Realms of England, and the 1st of France; that by the Cause or Colour of that we be King of France, and that the said Realm to us appertaineth as afore is said, or that we cause us to be named King of France, &c. our said Realm of England, nor the People of the same of what Estate or Condition they be, shall not in any time to come be put in subjection, nor in obeisance of us, nor of our Heirs and Successors, as Kings of France, &c.

Here is a plain admission, that the Successors to the Crown of *England*, tho not Heirs to E. I. would be Kings of *France*; and 'tis evident, they looked upon him as seized only in his *Politic Capacity*; but then some, supposing *France* to be a more honourable Kingdom, or Superior to *England*, this provision to keep *England* as a separate Realm was thought requisite.

But that caution plainly argued their Judgment, that if *England* had been in any respect under *France*, or inferiour to it, the King of *England*, by succeeding to the *French Crown*, would have had *England* in his Politick Capacity, as King of *France*.

The *British*, afterwards the *English Monarchy*, having extended over all parts of this *Island*, and particularly over *Albany*, while that was all the Land of the *Scots* here, and over all other Territories, which from time to time have come to the *Scotch Subordinate Crown*; since those Kings de-

derived all their Right from the Grant of the Crown of England; the contract upon which they have held it may be considered, either, as made by the Superior Crown with the Prince alone, or with him and his People, or else with the People alone.

The last of which need not be touched upon, being wholly inconsistent, not only with the notions of Sir Thomas Craig and his Non Juring Editors, but with the nature of the Grant.

If it were with the King alone, which is most agreeable to their Scheme, then it would be evident, that as a Man cannot contract with himself, he cannot enforce any thing that might look like such a Contract; and therefore whatever Grants had been made from the Crown of England of a Kingdom in Scotland, to a Man and his Heirs, still depending upon the Crown of England; when by the Heirs having the Superior Crown, the Contract of Dependency were dissolved, the very Kingdom depending on that contract would cease to be a Kingdom.

This would not be the consequence of taking the Contract to be with the Prince and People.

To judge of the Contract according to the state of Succession to the Crown of Scotland, before their James the 1st did Homage for the Kingdom, we may well suppose an agreement with the head of the reigning Family, and the People of Scotland, that preserving the Right of that Family they should be at Liberty, when they had not concluded themselves by Acts of Settlement, to present the most deserving of the Family to be constituted King, by the Monarch of the Island.

But

But from the time that their *James the 1st* did *Homage* for himself and his *Heirs*, a strict Rule of descent was to be observed, according to the Law of the *Monarchy*, within which this *Kingdom* was erected: and if by this Rule the *Crown of Scotland*, being possessed by the Heir of the *Crown of England*, returned to the Fountain of that power, whether entirely confounded, or continuing a distinct Crown, must be determined by the Law of *England*; which being *Feudal* in relation to all Inheritances, the consequence of this will best appear, when we observe what follows upon *Scotland's* being a *Fief* of the *Crown of the Monarchy*.

In pressing the duty of subjection to the Imperial *Crown* of the *British Island* coetaneous with the *Monarchy*, I cannot with equal Judges be thought to entrench upon the Liberties of Mankind, who have greater Benefit and Freedom by submitting to equal constitutions, long established, than they could reasonably propose to themselves by innovations of any kind.

But such a Liberty as is now contended for by them, who set up for *Patriots* in *Scotland*, being contrary to *God's Law*, requiring Submission to that *Imperial Crown*, under which he has placed them, and to their own most valuable Interests, as *Men* and *reformed Christians*; they cannot assume it without Impiety to *God* and their *Country*.

The duty of submitting to the *English Act of Parliament*, which has settled their *Crown*, as it is an *Appendage* to the *Crown of the Monarchy*, having appeared from the consideration of that *Kingdom*, as an undoubted Member of the *English*

glish Monarchy, we may next consider their Kings as Feudal Homagers for their Kingdom, which they have appeared to be from its first Erection.

As E. I. claimed, and Authorities of successive Ages evince, the Kings of England have been from of old rightfully possessed of the Superiority and Direct Dominion over the Kingdom of Scotland.

What Direct Dominion imports, take Sir Thomas Craig.

Of Suc.
L. 255.

' No man gives a Fief but on these Terms, so
' that it holds of himself, and he retains to him-
' self the property of the Fief, that is the *Directum*
' *Dominium*, and consequently the Fief is as much
' the *Superiours*, as 'tis the Vassals. *Scotland*
then being considered as a *Fief* of the Crown of
England.

1. Whatever pretence may be made to an unalterable Right of Succession to the Crown of *Scotland*; the doing *Homage* for that *Kingdom* to the *Lord of the Fee* was essential to the *Seisin*, and till that was performed, no King of *Scotland* was a Lawful King.

2. The *Homage* when done, was a plain *original Contract*, upon the with-holding the Duty imported by which, their Kings lost their *usufructuary Right*, and the *direct Dominion* returned to the *Lord of the Fee*.

3. Whoever of the Royal Family had *Investiture* from the Crown of *England*; he and his Descendants, performing the *original Contract*, were *Rightful Kings* against all Pretenders whatsoever.

4. If the race of their Kings fail, there's an *Eſ-ebate* of the Fee to the Superior *Lord*, the Legal Possessor of the *Imperial Crown*.

5. If

5. If upon the failure of that Family, another is set up, acceptance of Homage for the King^{268.} of that new head of Successions ; bars the Lord of his Escheat, which may be applied to any of the instances where a Successor to Mac-Alpin, or one of the Roytelites, in the time of Canute the Dane, was not of the Scotch Royal Family.

6. When, as in the case of our James the 1st. of Scotland the 6th, the mesne Lord has the Superior Fee, as he cannot be a Lord to himself, he has the whole united to the Superior Seigniory, the usufructuary to the direct Dominion.

7. Tho Sir Thomas Craig and others, call this a consolidation of the Fee, 'tis strictly only of the Seigniories ; for the Tenants continue their former Properties within the Fee, only pay their Services immediately to the Supream Lord.

8. A dependent Kingdom coming to the Crown, is plainly of the nature of an Honour ; the Tenents of which, upon the Honours coming to the Crown, as was observed above, held not in chief, but of the King as Lord of that Honour.

This is within the reason of a resolution in ^{9 Rep.} our Law. ^{25. b.}

'When a Privilege, Liberty, Franchise or Jurisdiction, was at the beginning erected and created by the King, there, by the accession of them again they are not extinct, nor the appendance of them severed from the possessions.

Thus Scotland, tho it return'd to the Crown of England, by the Accession of J. 6. to the Imperial Crown of the Monarchy, still continues a

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Kingdom held of this *Crown*, with the only difference, that as before they had *Kings* of their own ; henceforward, unless the *Crown of England* duly make some other Provision, whoever is *King* or *Queen* of *England* is, and will be, thereby, *rightful King* or *Queen* of *Scotland*.

9. Here 'tis worth observing, upon what Terms Sir *Thomas Craig* yields *Homage* to be due for the Kingdom of *Scotland*, and what he owns to follow from that right, by the *Feudal Law*.

Among several cases, in either of which he yields all that I contend for, he says, ' If *the Kingdom of Scotland was ever the Patri-Of Homage mony, or under the Protection of that which is p. 62, 63.*' now called the *Kingdom of England*, except it were a long time before the *English Monarchy* had a being ; if there were not always War, &c. and more than *Vatinian* hatred between the two Kingdoms ; if the *King of Scots* did not assist the *King of France* with all his might against the *King of England*, both by sending Auxilliaries into *France*, infesting them at home, and provoking them to fight, and always preferr'd the *French King's Interest* to the *King of England's*, even in the greatest of his own difficulties and dangers (which was neither the part of a *Vassal* to his *Lord*, nor of a *Lord* to his *Vassal*) if ever the *King of Scots* appeared at the *King of England's Court* or *Parliament*, either to give Advice or receive Judgment ; if ever any *King of Scots* was invested by the *King of England*, or desired the renovation of the *Investiture* ; or if the consent of the *King of England* was ever expected or desired

' fired, at the inauguration of our Kings ; we shall
 ' not deny, but that the Kingdom of Scotland owes
 ' the Fealty of a Clyent, and Homage to the King
 ' of England, and that the King of Scots shall be
 ' accounted his Liege Vassal, and Clyent, and bound
 ' to all services as such.

' But, says he, seeing there were always those
 ' grudges and hatreds betwixt the Nations, that we
 ' read of, and that almost without any intermission
 ' for above 1000 years ; what Man who is capa-
 ' ble of making an equal Judgment, will give it
 ' as his opinion, that the King of Scots owes the
 ' Fealty of a Client to the King of England, or
 ' that he is his Liege Subject ?

Tho' he seems to put the issue chiefly upon the
 quarrels between the two Nations, which he will
 here have to continue without intermission, he
 plainly agrees, that any one of the particulars
 are sufficient badges of the Vassalage or Clientary
 State, which he himself has rendered the more
 evident, by putting the cause upon Facts, e-
 very one of which is point blank against him.
 For,

1. The Confessor's Law, which he appeals to
 shews, whatever the Scots have within this Island,
 to be the Patrimony of the Saxons, as legally suc-
 ceeding the Britons.

2. That Law shews, that as by virtue of the
 Constitution establish'd by King Arthur, in the
 British times, the Scots whenever they first settled
 here, were to be Sworn Brethren with the rest of
 the Inhabitants of the Island, to defend the Person
 of the Monarch, and the Rights of the Crown of
 the Kingdom of Britain, since of England ; they
 often acted in the discharge of their Duty, against
 the Danes and other Invaders.

Upon second thoughts, Sir *Thomas* has entirely renounced all that he would ground upon the supposed Enmity, and Wars between the two Nations, in these Words.

Of the Succession. 'No Man can say, that ever the *Scots* molested the *English* with any Wars, as long as the Kingdom of the *English Saxons* lasted, as St *Edward* witness'd in that Statute, and the chief Men of the Kingdom.

According to which, by Sir *Thomas* his own confession, *Egbert* the first *English Monarch*, and all his Successors to the time of that Statute, were peaceably possessed of that Superiority and direct Dominion, which the *Confessor's Laws* shew to be part of the Fundamental Constitution of the *Monarchy*.

3. As to the confederations with the *French*, the only material question of fact is, whether they were prior or subsequent not only to the *English*, but to the *British Monarchy*. Besides what our *Hystoriographer Mr Rymer* has shewn unanswerably, of their fiction about a League with *Charlemaign*, when they had no Kingdom here, and when, however if they had such a League, it could have had no force, for want of the consent of the *English Monarch*; Sir *Thomas* himself owns, in what I have cited out of his Treatise of the Succession, that the first League must have been since the *Norman Race* succeeded to the *Monarchy*.

At which time, if there had been no such thing as *Homage*, all Inhabitants within the *Island*, were Subjects owing Allegiance to the Kings of *England*, and such Leagues with *France* entered into by the *Scots*, whenever they first began, were contrary to the Duty of their Allegiance.

4. That

4. That their King *Kenneth* attended in King *Edgar's* Court, *Wm in Henry* the 2ds Parliament, and *Baliol* in E. 1st. where he received judgment of deprivation, cannot be deny'd.

5. As to the *Investitures*, suitably to what I shew'd above out of him, he here agrees, the consent of the King of *England* to any *inauguration* of a King of *Scotland*, to be a sufficient *Investiture*, and not here to mention others, *Malcolm* in the time of the *Confessor*, *Edgar of Wm. 2.* and *Alexander of H. 1.* had *Investiture* from the Crown of *England*.

These things having appeared beyond possibility of a reasonable doubt, it must be agreed from the nature of the evidence, as well as Sir *Thomas Craig's* confession, that the Kings of *Scotland* have been, and of *Right* continued, *Liege Vassals* and *Clients* of the Kings of *England*, and Sir T. C. were bound to all Services as such; the sum of Homage of which Services as he gives it in another place p. 61. is, that he is obliged to maintain a sincere and inviolable Fidelity towards his Lord, and when he Swears the same, he performs Homage.

Lets then observe from him the consequence of this in two cases.

1. If the *Vassal* joyn with *France* against *England*.

2. If he happen to be King of *England*.

1. In the first case Sir *Thomas* agrees it to be *Perjury*, and if the Nation had joyned in Swearing to the Chief Lord of the Fee, that such a joining with the Enemy of *England*, is a National Sir T. C. Perjury: He agrees further, that the Vassal is to of Homage hazard his own Life for his Lord's in Battle, and if p. 60, 61. be forsake his Lord in time of fight, he is deprived of his Fee.

Nor is this the utmost that he, when there is
Of the Succession, f. enforces from the *Feudal Law*: *Dole-*
cussion, f. *man had urg'd, that ' Blanck the Daughter of*
 376. *' the Earl of Lancaster, was Sole Heir of that*
' Estate; and therefore that Dutchy necessarily de-
' volved upon the Children of that Marriage,
' and consequently upon the Kings of Portu-
gal.

In answer to which, and to shew how far such pretenders are removed from any claim to that *Dutchy*, he says,

' 'Tis known, that the *Dutchy of Lancaster* is a
 ' *Fief of England*, and that no Person has ac-
 ' knowledged the King of *England* for that *Fief*,
 ' or demanded *Investiture* in it from the *Superi-*
 ' *our* these 200 years. So that the *Fief* returned
 ' to the *Superior*; for if the *Lord* or *Superior*
 ' has been in possession of the *Fief* thirty years on-
 ' ly, and the *Vassal* all that while does not de-
 ' mand the *Investiture*, nor swards *Fealty*, nor
 ' makes offer of Service to the *Lord*, according
 ' to the condition of his *Fief*, the *Fief* returns to
 ' the *Lord*.

' Nay, *ex summo jure* in strictness of Law; if a
 ' *Vassal* abstains from demanding the *Investiture*
 ' one year after the Death of his Predecessor, he
 ' falls from his *Right of the Fief*. He agrees, that
 if the *Vassal* project Hostilities against his Sov-
 reign, he thereby renders himself unworthy
 of enjoying any *Fief* under him.

Therefore it must not be deny'd, that from the time that any Successor of J. r. of *Scotland*, had lapsed his time of taking *Investiture*, much more upon open Hostilities against the Crown of *England*, the *Fee* was in strictness of Law re-u-
 nited: nor is any *Laches* imputable to the Crown,
 and

and if there had been any consequence from such neglect, to the prejudice of the rights of the Crown, that acquisition which was made to the Crown in the times of *Usurpation*, if it did not continue Scotland under the immediate Government of *England*, at least sufficiently asserted the Superiority, and direct Dominion, of the English Crown.

The right of which could not be prejudiced by the indulgence of King Charles the 2d, especially if, as some say, the inducement to it was an Act of Parliament promised, and afterwards obtained in *Scotland*, for an Army of 22000 Men to march into *England*, or elsewhere, to attend the Kings Commands.

However, it may be hoped, that a Nation immoderately fond of a mistaken point of Honour, may, by yielding to the less harsh consequence of the right of devolution, by their Kings becoming Lord of the Superior Fee, prevent all nice disquisitions, what right may remain in the Crown of *England* to a further Subjection, than will follow by a consolidation of the Fee, by a Descent and Settlement of both Crowns, and that there may not be the least occasion to urge its having been taken into the hands of the *English*: after a Forfeiture to the Crown of the Kingdom, or however, that the right of insisting on the Forfeiture has not been diminish'd,

Here I may well repeat Sir Thomas Craig's objection, against the continuance of the Superiority of the Crown of Britain over Albany, upon the Death of *Brutus's* Son *Albanactus*.

'For,' says he, if *Locrinus* had the Superiority of *Albany*, and succeeded *Albanactus*, deceased, it necessarily follows, that the Liege

Fee was extinguished with *Albanactus*, and that
Albany returned to the Superior Lord, *per consolidationem utilis Dominii cum directo*, by consolida-
tion of the profitable or usufructuary Do-
minion with the Direct, as is usual in Vassa-
lages; where the Lord of the dominant Estate
succeeds to the Lord of the subordinate, or
as the Creditor succeeds to the Debtor, & *per contra*.

Where the Tenants succeeding to the Lord, is agreed to work a *consolidation* of the Fee, as well as the Lord's succeeding to the Tenant; and by consequence, by the accession of J. 6. to the Crown of which he held his Kingdom of *Scotland*, he was as truly seized of the Kingdom of *Scotland*, in the Right of the Crown of *England*, as the Issue of *Edward the 6th*, and the Queen of *Scots* would have been, if the intended Marriage, defeated by the French, had taken effect.

Consider either the consequence of Hostilities, as well as denying *Homage*, or else the point more to the Honour of the Scots, and which I therefore principally insist on, the *devolution* and *consolidation* of the subordinate Imperial Crown; it follows from what I have shewn, to be the nature of this *Hereditary Monarchy*, and of the dependency of *Scotland*, that her Majesty is by a *Divine Right*, seiz'd of the Crowns of *England* and *Scotland*, to her and her *Heirs and Successors*, according to the Act of settling the Crown of *England*, with all the Dominions thereto belonging.

It follows further, that they who deny the Right of the House of *Hanover*, after her *Majesty* and the *Heirs* of her Body, are not aware of the plain import of the *Act of Parliament*, which makes

makes it *High Treason* by any overt *Act*, to derogate from that Right to the *Crown of England*, and its Appendages, which is ascertained by the *Act of Settlement*.

This *lawful Authority* is thus become *God's Ordinance*, which they who resist, ought to fear the ^{Grotius de Veritate &c.} severe denunciation of *Judgment*. As I remember, that great Man *Grotius*, in his Treatise of the Truth of the *Christian Religion*, uses it as an undeniable argument of the *Divine Providence*, and interposition in *Humane Affairs*; that whatever form of Government, has obtained in any Nation, is still preserved, notwithstanding all the *Plots and Machinations* of Men to the contrary.

This may well be applied to the *British Monarchy*, continuing the same under the *English Name*; and they who contend for a *Divine Right*, Antecedent to all *Humane Laws*, and to which they would have all Civil Laws, and Interest Sacrificed, would do well to consider their obligation to the *Divine Law*, arising from the *Civil*, and *inseparable* from it.

Herein lies true Religion, and the true point of Honour; as nothing is more honourable, than to keep to the real obligation of *Oaths*, and those Laws which give them their force, and meaning.

If *Worldly Interest* may be taken into the Scales, still the *Interest of Religion* in the World, ought to have the *transcendency*; and therefore it may be hoped, that all who have a just value for the *Protestant Religion*, will close with a consequence of the Right of the *Crown of England* at this time absolutely necessary, for preserving

ing

ing the free profession of the true Religion in this Island.

The denying the Right, as it has been heretofore, must now, necessarily be grounded upon *French Counsels*; and must draw on such a force to back it, as cannot but make them masters of Scotland at the least.

The dangers of *Confederacies* with France, since it has become such an overmatch to any of its Neighbours, by that Naval Force which its Friends in *England* conniv'd at, while they might have crushed it, is of a far different nature from what it was formerly.

Then they only occasioned just punishments for their Revolts, which they suffered sooner or later, from the *Lord of the Fee*; but now that juncture, which should free Scotland from its dependency upon the *Imperial Crown of England*, must render it a *Member of France*.

'Tis obvious, that there can be no medium. As Men of Honour, the Scots in this may remember how, for the good of the Protestant Religion, the *English Nation* would have quitted all the advantages their Arms had given them, in a just War, to have laid all disputes about Punctilioes of Honour, by a Marriage between the *Lord of the Fee* and his *Vassal*; and how upon the same commendable ground, they admitted the King of Scots to the Crown of *England*, tho in the judgment of all former Ages, and by the fundamental Right of the Monarchy, till they had made recognition of the right of King James, they were at liberty to have made some other Election, within the Royal Family.

If sense of Honour may not prevail, unless a considerable Interest be tacked to it ; I must recommend to their consideration, whether if they shall not receive the Successor to the *English Crown*, they can with any Justice retain *Lodeny*, which they never gained from *England* by the Sword ; but by free gift, in confidence of their continuing in due Subjection to this *Imperial Crown*. And I may ask them, who contemn my assertion of the Right of my *Country*, whether it will become *Englishmen* to give up, not only the point of the *dependency* of *Scotland*, but the right to *Lodeny*, tho the continuing consideration of it be with-held.

If to considerations pressing upon all in general, it may be allowable to add any thing relating only to particular Persons ; I may add, that if after her present Majesty should, to the unspeakable loss of her Subjects, resign her *Easibly* for an *immacessible Crown of Glory*, the *Scots* should go about to withdraw their *Allegiance* from the Successor to the *Crown of England*, and set up a Prince of their own, as in an *Independant Kingdom* ; from that time all who shall be born in *Scotland*, according to the Statute of the Kings *Prerogative*, declaratory of the *Common Law*, and the case of them who were born in *Normandy*, after it was under the *Allegiance of France*, would be *Aliens* in *England*, and Lands which otherwise might have descended to them, would *Echeat* to the *Crown*.

Duke Hamilton, for instance, who has near 4000 l. a year with the Daughter and Heir of the Lord *Gerard of Bromley*, might chance to have an *Heir* to his *Dukedom*, who would not inherit a foot of Land in *England*.

As

As I am far from designing any reflection upon the Scotch Nation ; I am zealous for every point of their real Honour : and Hope, that by a timely **Act of recognition**, they may prevent the urging that consequence of the *Homage*, in advertising them of which, I cannot but think, I serve them, as well as my more immediate Country.

L 429.

I should hope Sir Thomas Craig's confession may weigh with them ; ' we own, says he, that sometimes we were the first in taking Arms, but to our great loss and hurt, and that we also occasioned the Wars while we were entangled with Foreign Leagues, or rather madnesses, we neglected minding what was just, what was profitable, for some small present advantages. But we expiated those faults with our own Blood, and paid such punishments, as moyed compassion in our Enemies ; as in that overthrow which we had at Pincie, at a time when that so often wished for Union was almost finished. We were almost mad at that time, having been stirred up by the Preachings and Threats of the Priests and furious Monks, who reckoned that they were undone, should Scotland also have agreed with England in matters of Religion: For England at that time had made some alterations in Religion, overturned the Monasteries, and renounced the Pope.

These were the causes which then hinder'd the Coalition of both Nations into one, as was greatly wished for by them both ; and altho' God sometimes punishes the Sins of both People by Wars, yet he chastises them the more severely, who gave the occasion of War, and most commonly Victory attends the justest cause.

Set.

Setting aside the force of preconceiv'd opinions however taken up, and contempt of Information from a hand, of which low or hard thoughts may have been entertained ; I cannot think my endeavours can fail of good effect with any, but the *Nonjurors* in both Kingdoms.

They will be sure to represent me an Enemy to the *Divine Right of Monarchy*, and Succession to it, while they are contending for a right opposite to the *Divine* and truly *Antichristian*, but I establish the right upon the foundation, on which God has placed it, not only by his *Providence*, but by his *Law*, in which I am well assured, I duely avoid the two extremes of *Anarchy*, and *Tyranny*.

If those Gentlemen, who would be thought, out of Conscience, to promote an *universal Monarchy*, under which they would put their *Prince* by *Divine Right*; without the *Legal*, did not shew more Art than Honesty, in the Controversies which they manage ; they would not think it enough to baffle men of their own avow'd Principles, who rather than be thought fallible in what they have taught as *Sacred Doctrines*, are content to be accounted ill *Logicians*, in concluding contrary to their Premises. Contempt of Authorities in Law, upon a question of *Legal Right*, can never pass for an evidence of sincerity. The most subtle of *Dean Sherlock's* opposers, knowing the advantage given by an admission, as if the Settlement of the Crown upon the late happy Revolution were by *Usurpa-*

tion of the arguments drawn from Scripture and Reason

and Dr

Sherlock's

Cate of Al-

legiance,

Since &c. p. 12.

Before which he had said, it is a contradiction to the very nature of Law, to say it cannot be a clear and safe rule of Obedience.

Since, therefore, the question of the right of Succession to the Monarchy is a matter of Law ; they who have recogniz'd the Right, and Abjur'd the pretence of any, who does not claim under the Act of Settlement, till they quit those Premises which make the Nonjurors Triumph in their Logical conclusions ; may suffer a mean hand to take the spoils from the Enemy, and to convince the World, that Men may truly come in to the present Government, and maintain the Settlement to which they have Sworn, without the least imputation of Perjury, or Temporizing.

As our Saviour said of his Doctrines, that *they who did the Will of his Father, would know they were from God*; they whose ill practices do not Byass them against the Right of the Government, will easily discern, that I serve them with seasonable truths, in relation to the Succession to both Crowns, and obedience to that Monarchy, under which the two Nations have been for many Ages.

Both of them have renounced a fancy'd Right by the Law of God, Nature and Nations, antecedent to Humane Laws, and not to be limited by them.

Tho' the Scots have not gone so far, as the consideration notonly of Right, but Honour, and Safety, might have carried them ; they have put a limitation upon the Successor, requiring that the Person should be a Protestant, and their Lords and Commons went further in agreeing, that it should not be the Successor to the Crown of England, without conditions not likely to be obtained in the manner proposed.

I cannot but think, that the Interest which they have, in securing the most valuable blessing, will put all the sincere Protestants of that Kingdom,

dom upon receiving without any prejudice, the only visible means to so desirable an end. The Wise and the Honest of both Nations have seen, that an Union between them would be the firm Basis of their mutual happiness : but that principle of Union, which Nature, and the Fundamental Laws, and therein God himself, have laid, has long been disregarded.

If a struggle continue as between two Independent Crowns, each will be labouring to draw advantages to itself : but if all parts are considered as Members of that Monarchy, under which God has placed them ; every one in his station will, if he attend to his duty, pursue the good of the whole : And those methods, by which amity was reciprocally cultivated, and all were Sworn Brethren, to preserve the Person of the Monarch, and the dignities of the Imperial Crown, in the Folebmates on the first of May, or other Assemblies on the confines of both Kingdoms, may be happily revived and improved.

If the Danes, a weak and merciful Enemy, in comparison with the French, occasioned the frequent cementing this Union, in the times of the Saxons, by repeated Oaths of Fidelity to the English Monarchs, and cheerful fighting under their Banners ; as, before the Saxons, found the several parts of the Island acting under the British Monarchs ; Is France now less formidable than either Saxons, or Danes, or its favour to be courted, to make the Members give Law to the head ?

If I am too Sanguine in my hopes, that my representation of the Rights of the Crown of England, may tend to the Conviction of the generality of the Scotch Nation, who are not too deeply engaged with France ; I cannot but prosecute it

it with my wishes, as I have in these my sincere endeavours for the service of both Kingdoms.

As to four different States, which are all that can be propos'd to the choice of the Nation of *Scots*, honest men can't be much divided.

1. A total separation from *England*, upon a dissolution of Government; with which *French Emissaries* flatter a few hot headed *Republicans*.

2. A joyn't Commonwealth between *England* and *Scotland*; which vain *Chymera* could hardly enter into any sober Man's head, how much soever *French Money* may gild any such project.

3. A *King*, as far as there is consistency in the notions of *Sir George Mackenzy*, *Sir Thomas Craig*, and others, who by the Law of God, Nature, and *Sir G. M^r*, *Nations*, derives a title to a *Monarchy*, which can *justify* of never be limittted by the People, and consequently, as *Monarchy*. themselves infer, must be absolute.

4. That *Monarch* which God Almighty has appointed them, in ratifying the Law of *Man*, which has settled the *Crown of England*, with all its *Rights, Members and Appurtenances*, and among them *Scotland*, upon her present *Majesty*, her *Heirs and Successors*.

This, to which God requires subjection, works no change in the state of *Scotland*; and if her *Majesty's* pious disposition, and endeavours to promote the Interest of the *Protestant Religion*, and the good of all her People, meet not with a due return from her Subjects of both *Kingdoms*, it must be laid at their doors, who, with a false pretence of Zeal for her *Majesty's Service*, would by attempts against the *Protestant Succession*, leave her most defireable Life exposed to every *Bigot*, who may expect to merit *Heaven*, or *Secular Preferment*, by making way for a *Papish Successor*, and *French Government*.

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